

A Manager's Dilemma:
Corruption-Related Decision-
making

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Abstract

This thesis explores the meaning of corruption and bribery and its occurrence during the interface between corporate business managers and public officials. It attempts to understand the motives behind their corrupt acts for mutual gain and explores the damage corruption can inflict upon organisations, managers and society. A conceptual distinction between “active and passive” corruption is proposed in order to comprehend the role of a bribe-giving business manager. The concept of a “stakeholder” is broadened to redefine stakeholder issues and corporate social responsibility more comprehensively. My work seeks to motivate an internal review of a manager’s persona as a corruption-control function rather than rely on external corruption-control mechanisms alone. It examines the managerial need for a decision-making tool that could help business managers take corruption-related decisions without violating a stakeholder’s human rights across diverse nations, cultures and business situations. This thesis provides an objective managerial decision-making tool to assist managers discharge their global stakeholder responsibilities from a human rights perspective in their day-to-day encounters with corruption and bribery.

Preface

A multinational power company arrives to set up a power plant in a developing nation and chooses a locale. Residents in the vicinity of the proposed power plant site oppose the setting up of the power plant and resort to peaceful means of agitation. Their action is spurred by opinions of environmental experts who anticipate environmental problems once the power plant commences operations. Besides, the local residents fear a chain of costs escalation in their local economy due to the power company's higher electricity tariff. Local politicians support the residents' agitation and they provide local residents with a political platform to air their views. Within weeks the company's CEO meets concerned ministers, public officials and local politicians both from the ruling party and the parties in opposition. After the CEO's visit, the government and the local politicians issue press statements welcoming the power plant to the same site mentioning the power plant will bring jobs, provide much needed power and generate industrial development. The government claims to have re-negotiated the electricity tariff and got it reduced to the lowest possible rate. Government officials take pains to explain that the higher electricity tariff is inevitable due to higher set-up costs associated with modern equipment and technology. The government is satisfied that no environmental damage would occur and therefore approvals are promptly given to the multinational. The company immediately commences work on the power project.

The government's actions precipitate a series of protests from local residents and their peaceful agitation turns into a violent one. The police are directed to take all steps to protect company property. Demonstrators face police batons, tear-gas and the police open fire on the protesters during one major demonstration. Some protesters die while many are injured. Police maintain that they had to adopt these strong measures to maintain law and order. The press alleges the multinational bribed the ministers, politicians and government officials which brought about the change in their official stances precipitating strong police action against the people. These bribery allegations against government ministers, public officials and the police incite more protests and widespread

public outrage. The government appoints a committee headed by a High Court judge to investigate the allegations of corruption. During the next few months the power company continues work on the project and releases huge advertisements in the very newspapers that carried corruption allegations against the company. The same newspapers now carry editorials praising the multinational power company, its achievements elsewhere around the world and possible benefits that could accrue to the local community from the new power project. The committee submits its report concluding that the allegations of bribery against the multinational, politicians, government officials and police are baseless. It is rumoured that some of the committee members' children were sponsored to study in the multinational's home country.

The local residents who faced police batons and bullets are quickly forgotten and relegated to oblivion. Though nothing was proved against the company, the multinational's top management is aware that they bribed the politicians, public officials, police, judiciary, the journalists, editors and newspaper owners. These payments were made hesitantly, first by design and later by default to ensure that their power plant could be started. The only ones who remained unpaid were the faceless and nameless members of the general populace who paid with their lives, with possible environmental degradation of the place they lived in, and demise of their faith in the institution of democracy in which they believed in, before it all began.

This is a typical scenario of how a multinational company's operational decisions affect citizens in another country. The multinational company in question, while setting up a power project overseas opted for solving operational problems by paying bribes to politicians and public officials of the host country. Most probably, the multinational perceived these payments as a business necessity. Little did the multinational company estimate, that they would soon pay the police (to protect company property and lives), the judiciary (to conclude lack of evidence in the bribery allegations against the company) and the press (to stop accusations of bribery against the company and obtain favourable publicity) in order to keep their power project afloat, all as a matter of business necessity. The latter payments were more by default than by design and were knee-jerk

reactions to unanticipated problems the company faced in a foreign country. Managerial decisions that led to these bribe-payments undermined the multinational's overseas stakeholder commitments. Such events are not uncommon in different parts of the world. Peter Eigen, President of Transparency International (an international non-governmental body engaged in anti-corruption efforts) alleges, "the scale of bribe paying by international corporations in the developing countries of the world is massive".¹ The ninth international anti-corruption conference at Durban (October, 1999) re-affirmed their earlier declaration at Lima that:

Corruption is an evil that threatens and challenges all people around the globe, but bears with special cruelty upon the world's poor. It deepens poverty; it debases human rights; it degrades the environment; it derails development; it can drive conflict in and between nations; and it destroys confidence in democracy and legitimacy of governments. It debases human dignity and is universally condemned by the world's major faiths.

Should these statements made at international conferences be taken to be true? Whether the answer is 'Yes' or 'No', the sheer magnitude of damage attributed to corruption underlines its importance as a topic of research. Empirical research of corruption based on data collected from managers who paid bribes is difficult to obtain nor will bribe-receivers admit to receipt of bribes. During the U.S. Congressional investigations in 1975, about 500 US companies admitted (under amnesty) to their involvement in overseas bribery. Between then and now, the world has not witnessed another situation (of that scale) where corporate bribe-payers have confessed under amnesty. Bribe-giving is conducted in complete secrecy, away from the public eye, with a view to achieving private gain. The very nature of the problem obviously implies absence of reliable, empirical data to confirm the magnitude and nature of bribe-giving.

In my 16 years as a professional I have personally comes across varieties of bribe-givers and bribe-takers, numerous instances and novel ways of bribe-giving and bribe-taking. A typical bribe-taker or a bribe-giver can be almost anybody of any cultural and

¹ Peter Eigen President of Transparency International, January 20, 2000. www.transparency.org

educational background, any colour and nationality, any religious faith, and subscribe to any political belief and may appear to have acceptable moral views. However, it is not difficult to conclude that a bribe will be paid or a corrupt transaction entered into when one perceives a benefit in return and has the ability and willingness to bribe. A bribe is taken or a corrupt activity agreed to by one who can dispense that benefit or has access to dispense the benefit sought by the bribe-giver. These are the only characteristics common to bribe-givers and bribe-takers.

Throughout judicial history, prosecution of bribe-takers is prominent as compared to bribe-givers (Noonan, 1984). Are bribe-givers equally, if not more guilty, or are they guilty at all? This is a debatable question which can be answered upon close examination of the facts of each case. Confessions under amnesty, such as Carl Kotchian's statements in the Lockheed case (discussed in Chapters one and two), may not reveal the true manipulative strategies of the bribe-giver, nor will judicial investigations be able to unravel completely how a bribe-giver or bribe-taker's mind worked. Corruption is a "hidden world of understanding" between the parties to the act, therefore complete details will never be easily known to the outside world. Even if one confesses or admits to bribe-giving or bribe-taking or participation in a corrupt activity, there would still be no guarantees that the person is telling the complete truth. The nature of the problem therefore prohibits collection of unbiased empirical data. Klitgaard (1988:30) explains this situation: "researchers find it difficult to study corruption empirically because the parties involved have every reason to keep the data hidden". It is likely that respondents (if interviewed) will either deny completely or attempt to portray themselves as innocent victims of a system which forces them to participate. Carl Kotchian in his confession about overseas bribery before the US congressional committee remarked, "Was it really possible from the standpoint of reality, to say, 'I refuse to pay'? Kotchian's statement signifies the universal justification by those multinational managers who cannot refuse to pay considering the business realities. These business realities form the ethics of doing business overseas, and, "when in Rome, do as the Romans do" (Francis, 1991) is taken as the most appropriate business conduct with a view to avoid imposition of home country morals on a host country. Empirical research of corruption and the role of a bribe-giver

may or may not succeed in revealing the current state of affairs. Thus, the role of bribe-giving *vis-à-vis* business realities in myriad situations from the view-point of a multinational business manager would be better examined against universally acceptable ideas or “norms” of what “ought to be,” and not “what is” the current state of affairs. Donaldson and Dunfee (1999:11) believe that normative and empirical factors can influence each other. However, empirical research, if conducted in examining the role of a bribe-giver, cannot automatically lead us to normative ethical conclusions (Donaldson & Dunfee, 1999:9). If that route is unmindfully adopted, it would amount to commission of a “naturalistic fallacy” (Moore, 1903/1951:10) by drawing a normative ethical conclusion from the findings of an empirical research work.

Corruption as an issue and a topic of research is of great concern and interest for multinational businesses, who are being accused by Transparency International with “massive scales of bribery” and whose managers have to adhere to anti-corruption guidelines of the OECD (only in case of multinationals from 34 signatory countries), OAS (again restricted to multinationals of signatory countries), and EU laws, besides the laws in their respective home and host countries. This places an enormous responsibility on the shoulders of a decision-making manager. My personal experiences as a professional and as a member of society have encouraged me to explore “what ought to be” the decision-making process for a multinational manager if one chooses to dispense one’s corporate social responsibility towards the stakeholders and if one considers one’s own ethical well-being as an individual. The importance of one’s ethical well-being as a business manager should never be underestimated. Lockheed’s treasurer shot himself to death at the first signs of a major investigation (Noonan, 1984:657). Eli Black, chairman of United Brands committed suicide by jumping from the twenty-second storey of his office building, fearing imminent exposure of a \$1.25 million bribe paid in Latin America (Noonan, 1984:656). Similar experiences in the corporate world and my understanding of business ethics as an essential key to long-lasting business success have encouraged me to work on a conceptual decision-making model which could be used while taking decisions involving corruption. This thesis is intended to provide an objective managerial decision-making tool to assist managers in their day-to-day encounters with corruption

and bribery. It gives multinational business managers an opportunity to evaluate the implications of their decision *vis-à-vis* basic human rights before entering into a corrupt transaction. The thesis considers corruption as an human rights issue. It provides a good starting point against corruption to ensure that managerial actions, choices and decisions do not adversely affect basic human rights of any stakeholder. The soul of this thesis is to enable managers rethink and reject decisions involving corruption (see Chapter four) that infringe upon a stakeholder's human rights.

The thesis is divided into four chapters. The first chapter defines corruption and bribery and explores both the classical definitions and the definition of corruption as I view it. Chapter one provides a basic understanding of different nomenclature in literature dealing with corruption and bribery and distinguishes between "active corruption" and "passive corruption". This conceptual distinction between active and passive corruption, made by me, reveals the "intent of a bribe-giver", irrespective of business realities. Gift-giving too is explored. It is a part of many cultures; however, there is a fine line between gift-giving and bribe-giving. Some have put forth arguments justifying gift-giving as a matter of culture. Such arguments can hold good only if the gift in question can be publicly disclosed in the gift-receiver's nation. The logic is, if a gift can be publicly declared and is accepted as such in a particular culture, it is a gift, but if the gift-giving incident cannot pass the "test of disclosure with comfort" in the host nation's culture, it is definitely a bribe.

Chapter two of the thesis examines corruption's emergence as a part of the social and political process and as a product of diverse interest-seeking factions within society's political and economic structures. It explores both sides of corruption, namely the "demand" side and the "supply" side of corruption comprising of the public official on one hand and business on the other, that form this demand-supply nexus. Both the public official and the corporate executive owe fiduciary duties to their respective principals. The managers owe it to their shareholders and the public official to the people of that country. Both betray their individual fiduciary duties as agents and betray their respective principals' interest when they conspire to perform a corrupt act. The

relationship of private gain between the government official and the corporate executive results in a new principal–agent relationship between them, subverting their original agency commitments to their respective principals.

Corruption by its nature of private gain inflicts costs on society. Chapter three examines some arguments in literature about the alleged good effects of corruption (which are context specific) as well as arguments against corruption. The negative consequences of corruption are not context-specific and are universally more prominent, far outweighing the good aspects (if any) of corruption. Chapter Four provides an ethical decision-making tool based on a corporation’s social responsibility to the global society in which it functions. The easy to use model in the form of a decision-tree is designed to assist any decision-making manager take an ethically appropriate decision within a short span of time when required to decide upon whether to participate in a corrupt act or not. The model draws on existing literature in the area of ethics and particularly takes into account the universal “hypernorm” (Donaldson & Dunfee, 1999) of respect for human rights which can be gravely affected by a multinational manager’s decision to pursue business goals through corrupt means. A few such examples of corrupt corporate decisions that abused human rights are the killings of Ken Saro-Wiwa in Nigeria, Chico Mendes in Latin America and Union Carbide’s role in the Bhopal gas tragedy in India (these individual cases are not discussed in the thesis).

My thesis is an effort to state “what ought to be” the basis of decision-making in the face of business realities and encounters with corruption. It is not so difficult to practise and can be put into practice if one appeals to one’s ethical conscience, respects basic human rights and sees the entire business process as a part of one’s commitment to society and oneself.

Chapter 1: What is Corruption and Bribery?

“A preliminary understanding of corruption involves dispelling the myth of corruption as a matter of culture” -Transparency International’s Policy Statement

Introduction:

This chapter defines corruption and bribery as understood in literature and explains associated terms. It explores the fine line dividing gift-giving versus bribe-giving and sets “test of disclosure with comfort” as a yardstick to determine a gift within a cultural context. A significant distinction is made by the coining of two terms, “active corruption and passive corruption”. Both these terms play a key role in revealing the intent of the bribe-giver and the role chosen by the bribe-giver.

Corruption exists in all societies (Huntington, 1968:492) and has been accepted as a seemingly inevitable fact of life by people from all over the world (Pieth, 1999). It is a common perception amongst people that corruption is spreading (Ryan, 2000). Corruption has been a part of recorded human history and our society has never been without it (Noonan, 1984). The phenomenon of corruption is inseparable from questions of public morality and morality in general (Theobald, 1990:1). There is something immoral and wrong with the phenomena of corruption, bribe-giving and bribe-taking. Many believe that what is considered as corruption in one culture by an outsider is not necessarily treated as corrupt within that culture (Wraith and Simpkins, 1963; Jacoby et al., 1977:149). Multinational business managers encounter corruption at different times, in different situations at home and overseas, across different cultures. Each time these managers face a hard decision-----whether to participate or not; whether to gain or lose business; whether to risk reputation and company image or not risk it at all; whether to think of only their shareholder commitments, ignoring stakeholder commitments or vice-versa.

Most multinational business managers increasingly encounter these legal and ethical questions while taking corruption-related decisions in a multi-locational and multi-cultural context. Most managers are aware that the world of multinational business implies higher interdependence and more threats and opportunities, and needs greater awareness of the world's diversity and the ramifications of one's action in terms of host and home countries (Wartick & Wood, 1998). Multinational managers lack uniformly applicable managerial decision-making tools to ensure they meet their legal obligations and discharge their diverse stakeholder commitments. Their decisions, in reality, are dictated by feedback from local managers in host countries, their own understanding of local customs and conditions (whether based on correct or incorrect feedback), the pressures of performance and market shares, the pressures of personal executive career advancement and the prospect of additional stock options, and the pressures of day to day business decision-making within a limited time frame. On the other hand, their company policy documents may lay down strictures against bribery or corruption and in some cases may have detailed guidelines about handling of corruption and bribe demands. Irrespective of the written strictures or guidelines very few companies will admit in public that they paid bribes to secure business overseas or at home. Most multinationals would maintain that they do not pay bribes nor indulge in any corrupt activity. But those same companies would admit in private that they have made political contributions or some form of facilitating payment.

Background Literature:

In literature, corruption and bribery in whatever form and manner are accepted as universal phenomena by different authors (Nye, 1967; Huntington, 1968; Johnston, 1982; Noonan, 1984; Klitgaard, 1988). Most authors have studied the causes of corruption, its consequences, its occurrence as a part of political structures and the public official's role in corruption (Scott, 1972; Rose-Ackerman, 1978; Klitgaard, 1988; Theobald, 1990; Mauro, 1995). Literature provides very little scholarly work on the phenomenon of corruption originating from managerial efforts to "succeed" in a competitive global business environment. Available literature either states past cases and provides justification for the

passage of the FCPA (Foreign Corrupt Practices Act) by the US government (Noonan,1984) or enumerates consequent disadvantages faced by US companies while doing business overseas (Jacoby et al.1977). Publications discussing corruption-control and installation of control mechanisms focus on the public official (Klitgaard,1988; Rose-Ackerman,1999). Some scholars have explored the correlation between the stages of a nation's development and their influence on corruption and found that more corruption is experienced as an economy takes off and every developing nation experiences increased corruption in times of rapid development. Here too, the public official is the focal point (Wraith & Simpkins, 1963; Theobald, 1990). The researcher's task becomes even more difficult in conducting extensive empirical studies because there are inherent difficulties in obtaining accurate data and operationalising it. Klitgaard (1988:ix) admits these difficulties when he writes, "data are scarce, the literature is tentative and thin, with few theoretical frameworks, international comparisons or careful case studies." Some empirical studies such as Mauro's (1997) provide tentative evidence between corruption and its economic effects (lowers growth and investment). Authors like Elliot (1997) mention three different actors in the arena of corruption, namely: elected officials and politicians, non- elected officials (identified as judiciary and the bureaucracy) and private actors (which includes business). Elliot (1997) also distinguishes between "grand corruption" and "petty corruption". She describes "grand corruption" as corruption occurring at the highest levels of government involving decisions such as "procurement of military equipment, civilian aircraft, or infrastructure or broad policy decisions about the allocation of credit or industrial subsidies" (Elliot, 1997:178). While "petty corruption", according to Elliot, occurs when private actors interact with non-elected government officials for transactions such as "taxes, regulations, licensing requirements and the discretionary allocation of government benefits". However, in all these studies the decision-making role of business managers as a part of what can be called the supply side of corruption has not been explored. There is also a dearth of significant literature or specific scholarly work that could provide decision-making guidelines or tools to lead business managers through a decision process when dealing with corruption.

In recent times, the supply side of corruption has been under scrutiny in the international arena, though. Non-governmental bodies such as Transparency International have worked out a Bribe Payers Index ranking 19 leading exporting countries (see Appendix I). The OECD has laid down detailed strictures against Bribery of Foreign Public Officials and considers bribery of foreign public officials as a criminal offence. The OECD convention has been signed by all the major OECD countries who control 70% of the exports and 90% of direct foreign investment worldwide (Pieth, 1999). These international efforts recognise that business managers can play a significant role in tackling corruption and bribery. The international role expected of managers is limited to unilateral and categorical “do not” ignoring the myriad situations today’s multinational manager faces in day to day conduct of business. Moreover, international efforts in the form of such signed conventions lack uniform legislative enforceability across all signatory nations as well as non-signatories (Pieth, 1999). Nevertheless, the intent is conveyed that the international community expects business managers to refrain from bribery. The nine international anti-corruption conferences, the role played by (TI) Transparency International’s 60 national chapters, the OECD Anti- Bribery Convention, 1997; the strengthening of the FCPA in USA and increasing international focus on transnational bribery signal a change being demanded in managerial attitude by the stakeholder environment.

Buller, Kohls & Anderson (1991) maintain that multinationals are in the best position to create a global ethic. Today multinational businesses and their influence have grown phenomenally (Donaldson, 1989; Wartick & Wood, 1998) and these companies, by virtue of their operations, are in a position to influence global business ethics (Donaldson, 1989). Corruption and bribery are by nature private arrangements for private gain (Nye, 1967; Huntington, 1968) and any such private arrangement for private gain needs to be revisited to satisfy not only one’s moral conscience but stakeholder concerns and legal exigencies. Some authors have considered corruption as a matter of ethical relativism and attributed it to differences in culture (Wraith & Simpkins, 1963; Fadiman, 1986:128) and this understanding influences business decision-making. The oft quoted, “when in Rome, do as the Romans do” is considered as the best way to do business in a different culture

to ensure success. Francis (1991) has explained the “when in Rome” approach as a matter of ethical relativism. The multinational business manager operating in a global environment faces conflicts between home culture and host culture, between shareholder interests and stakeholder concerns, between one’s moral conscience and profit objectives, and conflict between one’s legal obligations and career advancement. A clearer understanding of corruption and its many hues would help formulate a managerial decision-making tool for day-to-day practice when encountering corruption.

What is Corruption?

What constitutes corruption and acts of corruption is a question of debate among scholars; however, they agree on certain common features evident in an act of corruption. Scott (1972:3) sums this up: “Corruption, we would all agree, involves a deviation from certain standards of behaviour”. This gives rise to a series of pertinent questions as to what those standards of behaviour are from which one deviates? What are the criteria laid down to establish those standards and who lays them down? Whose behaviour is to be checked against those standards? Scott (1972:3) mentions three broad criteria, each with a distinct analytical focus but overlapping with each other, namely: public interest, public opinion, and legal norms. He debates what constitutes “public interest” and what is “public opinion” and issues of law. He concludes that both public interest and public opinion have different connotations in different situations and may be difficult to use as yardsticks in all cases. If compliance with the law is the expected standard of behaviour, then are we narrowing down the issue of corruption to contractarian requirements and are we relegating a moral problem to a contractarian solution? The requirement of compliance with law would still harbour lingering doubts as to what is acceptable behaviour and what is not, and whether the law in question is unconstitutional or repressive. Scott (1972:5) addresses this dilemma aptly when he writes:

Our conception of corruption does not cover political systems that are, in Aristotelian terms, “corrupt” in that they systematically serve the interests of special groups or sectors. A given regime may be biased or repressive;

it may consistently favour the interests, say, of the aristocracy, big business, a single ethnic group or a single region while it represses other demands.

Scott's definition mentions "special groups" whose interests are served, albeit within the law by designs of a political structure. Such legal compliance need not be compliance with ethics wherein the rules are set for satisfying specific interests groups and in so far as they do that, such systems still remain corrupt. Legal compliance, however, as a criterion is not ruled out and scholars have used words like "norms", "formal duties", "extra legal", "system of public order" to define corruption and the underlying legal compliance. These same definitions have also highlighted the outcome of the corrupt act, namely: private gain at the expense of common good. Leff (1964: 510) defines corruption as:

Corruption is an extra-legal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case.

Leff's definition strengthens the use of legal compliance as a criterion but at the same time discusses influence to a "greater extent than would otherwise be the case" as an outcome of the process. Huntington (1968:492) defines corruption as, "behaviour of public officials which deviates from accepted norms in order to serve private ends." Huntington highlights the private nature of gain made through a corrupt transaction. Nye's (1967:567) definition is more comprehensive:

Behaviour which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains: or violates rules against the exercise of certain types of private-regarding influence.

Nye (1967) offers a better understanding by mentioning the possible beneficiaries of a corrupt transaction. Rogow and Lasswell (1963:132) define it from the viewpoint of public good or common good, thus:

A corrupt act violates responsibility toward at least one system of public or civic order and is in fact incompatible with (destructive of) any such system. A system of public or civic order exalts common interest over special interest; violations of the common interest for special advantage are corrupt.

Klitgaard (1988:75) contends that illicit behaviour (corruption) flourishes when agents (public officials) have monopoly power over clients by virtue of great discretionary powers that they (public officials) command by way of occupying a public office. On the other hand the agent's (public official's) accountability as an agent to the principal (the nation's electorate) is weak. In his work detailing control mechanisms for corruption he has defined these ingredients of corruption in an equation thus:

$$\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}.$$

A general consensus is noticed amongst these scholars: that corruption is for private gain at the expense of common good, it is a deviation from norms and subverts the rule of law. "Private gain at the expense of common good" provides the ground of ethical reasoning against corruption. However, literature provides exceptions to what is perceived as common good, but in reality may not be for individual good nor satisfy basic principles of equity and justice. For instance, in war time Germany the Nazi perception of common good involved imprisonment and extermination of Jews. Rose-Ackerman (1978:9) explains, "One does not condemn a Jew for bribing his way out of a concentration camp". The morality of this act of corruption overrides issues of legal compliance and private gain. Hence, the definition of corruption needs contextual application. Johnston (1989:16) says "there are many forms of corruption, differing in

participants, settings, stakes, techniques, and cultural legitimacy.” A few centuries ago, in most countries around the world, gift-giving to people in power, especially monarchs, nobles, tribal chiefs and public officials, was an accepted and essential practice (Wraith & Simpkins, 1963). In Japan for instance during the Tokogawa (1603-1867) rule, written regulations existed prohibiting acceptance of bribes, but in practice merchants offered large gifts of gold to public officials, calling them “gifts in anticipation” and promised them a “thanks offering” (Mitchell, 1996:5) when the work was done. Today gift-giving to people in public office, especially large gifts of gold will be open to question and the act would be viewed with suspicion.

The meaning of corruption for today’s multinational business managers is much wider than all the above definitions. For today’s managers, the stakeholder is as important as, if not more than, the stockholder in the 21st century setting of a global market place. Corruption today, for a business manager can be re-defined as: A phenomenon that requires illegal, immoral gratification in cash or kind in exchange for securing an unethical advantage over others in business and/or in society, and as a result undermines managerial stakeholder obligations. This unethical advantage can manifest itself in various forms ranging from bribes paid to win commercial tenders and contracts, obtaining promotional articles in return for paid advertisements, payment of bribes to escape legal obligations to more serious situations like using political influence for passage of favourable legislation by governments and installation of favourable governments both civil and dictatorial.

Corruption in certain cultures may not have the ingredient of illegal and immoral gratification as a quid pro quo between a public official and a beneficiary of a public official’s corrupt act. The public official’s corrupt act would nevertheless provide private gain to a close circle of people at public costs. These beneficiaries (people) could belong to the public official’s own family, extended family, circle of friends and associates, persons from one’s tribe or ethnic background or province. Such misuse of powers vested in a public office of national trust is undertaken by the public official to express love, devotion, loyalty towards one’s family, tribe, province or friends and associates, although

the public official is not paid for it (Abueva, 1966). This exception to a quid pro quo also amounts to corruption because the actions are designed to provide an unfair advantage to certain individuals or a section of society. Except for the situations defined by Abueva, corrupt influence and acts of corruption are sustained through an intricate system of bribery (irrespective of nomenclature), questionable payments and influence peddling against a quid pro quo.

Bribery:

Bribery is the act of providing incentives in exchange for an act of corruption. A bribe includes payments in cash or kind and can include provision of free goods or services and non-repayable loans. A bribe can also be called a gift or donation or bear any nomenclature denoting cultural customs and nuances. Bribes can be paid or provided before the task sought by the bribe-giver is done or it may be paid or given after the task sought by the bribe-giver is done. At times, bribe-givers and bribe-receivers claim legitimacy for their acts under labels of customs and cultural requirements. If the objective of any of these acts is to seek reciprocity and create a relationship or understanding of quid pro quo for private gain against public good, it is a bribe irrespective of the nomenclature used. In the context of business and its interaction with the government (public officials) corruption occurs and bribes are paid or given by a business manager. According to Noonan (1984:23), “in a modern society corporate bribers may be more powerful than the officials they bribe” and the “bribe-takers are among the powerholders in society that is why they are bribed”. One (corporate executive) has the power to bribe and the other (public official) has the power to reciprocate with the discretionary powers of one’s office.

The bribe given by a corporate manager to a public official is to achieve a favourable disposition and line of communication with the public official who has dispensing powers and whose dispensation is sought by the corporate. As Noonan (1984:697) clarifies: “The bribe is intended to reflect or create an overriding obligation. The briber pays because he (or she) feels he (or she) must reciprocate or must have reciprocation.” Noonan

(1984:697) goes on to reiterate: “ ‘Bribe’ is used today not only in its primary sense of an exchange with an officeholder but in the sense of any inducement given to alter conduct that would naturally be otherwise”. Johnston (1997:62) explains the process that underlies this primary sense of exchange thus:

The initiative may come from either private clients or public officials:

the first may offer bribes, the second may delay decisions or contrive shortages until payments are made, or may simply exhort them. The climate of corruption can be so pervasive that no explicit demands are needed: “everybody knows” that decisions must be paid for.

The bribe-taker is expected to reciprocate in exchange for the bribe. The bribe-taker is also conscious that the secret arrangement of reciprocity between the bribe-giver and the bribe-taker is enforceable by the bribe giver (though not in all situations). The bribe-giver can use the services of others to ensure performance and may have access to other influential persons within the bribe-taker’s organisation, or to organised criminals or command political influence. The bribe-giver can use a combination of all three or two of these to ensure compliance (on behalf of the bribe-giver) by coercing and intimidating the bribe-taker. Only in those instances where a bribe-taker is not afraid of such coercion by virtue of being more powerful than the bribe-giver can the bribe-taker risk non-performance of corrupt reciprocity. Most people understand what is a bribe when a bribe is offered or demanded from them because most nations around the world have words denoting a bribe in common parlance in their own language (see Appendix II).

Bribes vs. Gifts:

It is essential that a distinction be made between a bribe and a gift because many bribes acquire the cloak of gifts within a cultural context. Noonan (1984:697) elucidates this distinction:

The key differences between a gift and a bribe are: a gift may be disclosed,

a bribe must be concealed, the size of a gift is irrelevant whereas the size of a bribe is decisive, a gift does not oblige, a bribe coerces; a gift belongs to the donee; a bribe belongs to those whom the bribee is accountable.

These two words, *bribe and gift* form two ends of a segment, with a few related activities in between ranging from tips to cultural situations of gift giving. Tips are used to influence conduct for future services and reward past services, however the distinction between a tip and a bribe can be determined from the size of the tip, its relevance to the service rendered or expected and the fact whether it can be disclosed or not. If the size of a tip is disproportionate to the service and it cannot be disclosed, it is a bribe (Noonan, 1984:688). Gifts in a cultural situation express love, affection and exchanges during occasions in a context of personal relations (example: gifts exchanged at Christmas). The distinction between such a gift and a bribe can be made by examining whether love and affection exist within the cultural context claimed and, furthermore, is it being concealed or disclosed. Even in instances of statutory disclosure such as campaign contributions which can be made out of love for a political cause, the clue lies in pre-election or post-election campaign conduct of the donee (Noonan, 1984:621-51). If the donee reciprocates by a quid pro quo act, the campaign contribution is a definite bribe. The briber has sought in this case to secure a benefit of some kind from the office of the bribee. A gift always belongs to the donee (Noonan, 1984:697) once it has been given by the giver, but a bribe belongs to the bribe-giver to whom the bribee is accountable for reciprocal performance of a corrupt act in exchange for the bribe.

Gift-giving and taking is subject to cultural relativism in many places around the globe (Wraith & Simpkins, 1963) and such cultural relativism confuses and clouds the judgement of a decision-making manager. Certain cultural situations are accepted as ethically correct or moral within the society in question. A middle-eastern princess was beheaded for adultery in the eighties. This was considered sound punishment for adultery in that particular society but if the same treatment is meted out to anyone (for adultery) in another society, it would raise a human rights debate. Such cultural relativism “is

grounded in the assumption that a person or culture believing an act is morally correct, helps make it morally correct” (Donaldson & Dunfee, 1999:20). The fallacy of a relativist view is obvious, morality is linked to group or cultural belief and not to universal principles of ethics. Managers with relativist views, when involved in an overseas gift-giving decision can use the test of disclosure to satisfy themselves and their critics that their act of gift-giving is being done to honour a local custom or culture of gift-giving. If the managers feel that their act of gift-giving can be announced in the local newspapers without any adverse impact on the company’s work or reputation in the host country, then it is a gift within the cultural context of that country. If the managers are uncomfortable about the local journalists learning about the gift, then it is certainly not a gift within that culture because announcement of gifts which are culturally accepted will not create an embarrassing situation for the company in that country or in that society. We come back to Noonan’s (1984:697) distinction between a bribe and a gift: “a gift can be disclosed, a bribe needs to be concealed”. To be called a gift, it has to pass the “test of disclosure with comfort” (phrase coined by me). It is important in such situations to provide disclosure as evidence confirming that the gift in question is culturally acceptable in the host country. Undisclosed gifts, hidden from the public eye, thus can be classified as bribes, irrespective of cultural arguments as they fail the “test of disclosure with comfort” in the host country.

Lobbying:

Lobbying is the promotion of individual or group interests by various means including dissemination of information to create a favourable disposition towards that individual or group. Businesses adopt lobbying, inter-alia, for creation of favourable public opinion and legislative opinion to obtain benefits by passage of favourable laws or repeal of unfavourable laws. Lobbying involves creation of favourable public opinion and/or legislative direction to serve group interest or individual interest of the lobbyists. It is achieved unnoticed, usually to the detriment of public interest or common good. A lobbyist need not promise bribes nor pay a bribe; a lobbyist influences situations, individuals or systems to make them favourably disposed towards the purpose of the

lobbyist. Lobbying can occur through different means. One of the recognised forms of lobbying which is legally prohibited in USA is the “revolving door phenomenon”. Revolving door situations are said to occur when “government officials leave office and join private firms that then bid on contracts from government agencies for which the officials formerly worked” (Rauch,1997:113). In Japan, revolving door situations known as *amakudari* (literally descent from heaven) are legally accepted (Rauch, 1997:113). Another form of accepted lobbying is use of public relations consultants who plan media publicity to create or sustain a favourable public image of the client company. Such public relations exercises are widely accepted and not prohibited.

Favouritism and Nepotism:

Favouritism can be an after-effect of successful lobbying activity by an interested group or individual. Favouritism can also occur not necessarily as a result of lobbying, but on account of considerations of friendship, kinship, nationality, ethnicity, ideology or plain prejudice. Favouritism is said to occur when the decision-maker decides in favour of specific group or individual interests by deviating from the established standards of decision-making. The rules are bent, the procedures are abandoned or the procedures are ostensibly followed with a premeditated decision in favour of that group or individual who would not otherwise have been the beneficiary by merit. Nepotism is a form of favouritism. Abueva (1966:534) defines nepotism as arising from “kinship claims” in certain cultures and is expanded to include “non-kin on the basis of other personal or partisan considerations” (Abueva,1966:534). Nye (1967:567), defines nepotism as: “bestowal of patronage by reason of ascriptive relationship rather than merit”. Nepotism therefore is a form of favouritism influenced by relationships between the concerned parties (example: contracts given to a minister’s relative without inviting bids)

Marketing Commissions as bribes:

Some marketing commissions are a sophisticated version of bribery. Such commissions are paid to either the direct beneficiaries or their middlemen. These payments are not declared in public and statutory documentation, nor are they mentioned in agreements

available for public scrutiny. These payments are made either in cash or in the form of providing free goods, services or non-repayable loans or amounts paid into numbered bank accounts (in any of the tax havens). Bribes of this nature are labelled as marketing commissions or “market contingency fund” as Lockheed called it. Lockheed used its “market contingency fund” to pay Saudi Arabian middlemen in order to win the deal to supply planes to Saudi Arabia (Sampson, 1977:198). Such commission payments frequently occur in transactions involving sale of arms; sale of airplanes (example: Lockheed aircraft sales in Japan and Indonesia), both civil and military; construction tenders; and aid spending by donee country. Secrecy from the public eye and non-disclosure in statutory documentation are the key words which would confirm that they are bribes. For example in case of Lockheed’s aircraft sales to Saudi Arabia, three different contracts were discovered for the same transaction in course of investigations and obviously all three were not public documents. (Noonan, 1984:659).

Facilitating payments:

Multinational companies while doing business in a foreign country encounter situations when they have to either bribe or else suffer business losses, property losses and even loss of human life. In many countries where political corruption is rampant at all levels, it becomes a part of a multinational corporation’s business agenda to take care of the politician or ruler who collects his share to permit the multinational an entry into his or her country; the legal authorities including the tax department who can interpret laws to harass the company; petty officials who will find fault with day-to-day rules ranging from hygiene, employee welfare, working conditions, export/import documentation and packaging, to bank permits for repatriation of profits, for example. These situations are typically extortionate and require multinational businesses to pay or else suffer time delays, losses and, at times, threat of closure of operations. These are situations in which the bribe-taker demands bribes and the bribe-giver has to give in as a matter of commercial prudence and practicality.

Extortion:

Bribes paid under necessity or grave compulsion need to be distinguished from the bribes explored above. If the bribe-taker is in the position to oppress and cause physical harm to the bribe-giver, the act should more appropriately be termed extortion. The bribe-receiver is not a mere receiver who has entered into a quid pro quo as a receiver but as a collector of bribes by virtue of his or her power to oppress, harm or injure. In such situations the moral responsibility is with the bribe collector or the extortionist and not the bribe-giver paying for peace and protection. This applies to companies as much as to individuals. Payment of protection money to organised extortionists (ranging from politicians, administrators to crime syndicates and terrorists) is not uncommon in many countries. It is like buying insurance to protect corporate property and lives of one's employees.

Active Corruption and Passive Corruption:

The foregoing analysis of varying types of corruption reveals two types of situations for a bribe-giver, namely:

- a) when the bribe-giver initiates the process of corruption.
- b) when the bribe-giver faces demands from a corrupt system or group or individual.

		Bribe-giver is:	
		Initiator	Compliant
Bribe-receiver is:	Initiator		Passive corruption
	Compliant	Active Corruption	

As an initiator of the corruption process, the bribe-giver's intentions are premeditated and therefore it amounts to "active corruption". Every business manager who initiates the process of corruption, be it bribery, lobbying, making undisclosed gifts, or offering facilitating payments without a demand, can be said to have involved in active corruption. In those cases where the manager responds to the demands of a bribe-seeking system, or group or individual, the manager is a passive participant and is said to have involved in passive corruption. This distinction between active corruption and passive corruption clearly states the role chosen by the bribe-giver. "Business has the power to uplift, business can also corrupt and damage" (Donaldson & Dunfee, 1999:25), therein lies the difference in the intent and role chosen by a decision-maker.

Conclusion:

Corruption and all acts of corruption have existed throughout history with the aim of private gain which could disadvantage others in the process. Universally the word "bribe" has an equivalent in most languages. Gift-giving within a cultural context to be distinguished from a bribe should stand the "test of disclosure with comfort". Corruption can be active or passive depending on the intention and initiative taken by the bribe-giver. Whenever the bribe-giver takes the initiative to work on an act of corruption or plan an act of corruption, it amounts to active corruption. Whenever a bribe-giver responds to the demands of a corrupt system or individual as a matter of response, it is passive corruption. Active corruption is sustained by offer and payment of bribes, undisclosed gift giving, payment of undisclosed marketing commissions, lobbying for securing acts of favouritism and nepotism. Passive corruption needs the bribe-giver to pay or deliver as a matter of either commercial prudence (facilitation payment) or to buy peace and protection (extortion).

Chapter Two: Corruption: The Process

Introduction:

Corruption as a process has two sides to it, namely the demand side and the supply side (Jacoby et al, 1977; Rose-Ackerman, 1978; Klitgaard, 1988; Pieth, 1999). Although both influence each other, it is difficult to pinpoint which one operates first as a catalyst to the process. It is the proverbial question of which came first, the chicken or the egg. Existing literature has not taken a clear stand on which one occurs first. However for the purpose of this thesis I have classified corruption as “active” or “passive” corruption with a view to understand the role played by each participant in a corrupt act, irrespective of whether the participant is a part of the supply side or the demand side of corruption. Elliot (1997:175) has defined corruption as a social and political process. She (1997:176-77) has identified three types of participants in corruption, namely elected officials and politicians, non-elected officials and private actors (which includes “business”). In this thesis I have restricted myself to the occurrence of corruption as a result of interface between a corporate executive and a public official (includes elected officials, politicians, non-elected officials). Corruption between these two parties creates a new informal principal-agency relationship subverting their individual agency commitments to their respective principals. The question of whether the corporate executive assumes the role of a principal or an agent in a particular transaction depends on the “active or “passive” role played by the corporate executive (bribe-giver).

The Demand Side:

Rose-Ackerman (1978) sees corruption as emerging from the political process and administration of laws. Political scientist James Scott (1972) has analysed corruption as a process emerging from the role of government. Modern governments play an increasing role as consumers, producers and spenders, as compared to the, “ traditional order where

state activity was limited more to functions of law and order, defense, and religious or ceremonial activities” (Scott,1972:14). Public officials increasingly interact with businesses as a result. These officials hold enormous discretionary dispensing power bearing financial importance ranging from purchases, contracting out services, issuing operation licenses, leases of industrial land and mines, permit use of air space, sea lanes, permit exploitation of natural resources, passage, interpretation and enforcement of laws. Thus, “corrupt incentives exist because state officials have the power to allocate scarce benefits and impose onerous costs” (Rose-Ackerman,1999:39).

These public officials operate within the concurrent political system in that nation and are affected by it. Within that formal political system there also operates an informal system of self-interest seekers who attempt to secure their own interests within the range of a public official’s discretionary powers. For instance, a member of parliament nurtures his or her constituency with prospects of re-election in mind and uses his or her position to assist constituents; the minister does not ignore the various factions within the cabinet and the factions within the bureaucracy (civil service) who need to be appeased; the opposition works towards securing power in the next elections; the bureaucrat has to survive political changes, retain a secure position and create his or her own power base. Even in a non-democratic form of government, differing interest groups in administration attempt to secure one’s interest in terms of access to wealth and power. Each faction within an existing political structure strives for more power, more influence and more wealth—all of which create an elite ruling class. Creation and sustenance of such elite classes which command power, influence and seek wealth is the product of political activity within any existing government. Scott (1972:2-23) sees corruption as an informal political system working within the formal political structure of any government, and corruption, like other forms of political influence, often arises from the claims and demands people make on the government. The political influence process by itself is a process of “trading influence”. Any transaction of influence has an undertone of *quid pro quo* implying undertones of corruption (be it plain bribery, undisclosed gift giving, nepotism or favouritism). Informal political systems of corruption operate similarly in different nations with different ideologies at different times, because similar forces are at

work to secure one's individual or group "interest". Scott (1972:23) explains this process:

We can discern similar forces at work, for instance, in the bribe a Chinese peasant might have paid a Mandarin bureaucrat to escape the annual head tax a century ago and in the money a Ghanaian farmer gives a tax official today to under assess his annual income. The loan a prominent merchant might have given the English King in the seventeenth century in return for being awarded the salt monopoly is comparable in many ways to the campaign contributions a parking-meter salesman gives an American city mayor in exchange for the promise of a post-election supply contract.

These demands from informal political systems operating in any nation make public officials aware that their discretionary power (albeit within the law) to dispense, can beget wealth, and therefore they work towards seeking wealth. Rose-Ackerman (1978) has called it "rent seeking behaviour" denoting the "monopoly rents" sought by them in exchange for the monopolistic discretionary decisions they can dispense. The public official becomes an "influence peddler" whose stock-in-trade is "influence" (Jacoby, Nehemkis & Eells, 1977:129). Klitgaard (1988:42) explains this situation as one where, "officials spend an increasing amount of time looking for ways to secure bribes and extort payments, rather than exerting themselves in fulfillment of their public duties". The office of a public official operates like a private enterprise whose underlying purpose is to amass wealth and power; therefore, "government employment offers an unrivalled opportunity to improve one's status and prestige, to amass great wealth, and to exercise power with few restrictions" (Scott, 1972:13). Such opportunities presented by occupation of a public office encourages trade in public offices (Rose-Ackerman, 1978). Public offices with a high bribe-earning potential are considered lucrative posts and such postings are "sold for a price" to civil servants by higher-ups in the formal administrative and political structure.

One can argue that not all public officials are corrupt, nor are all people in power corrupt. Admittedly so, but it also remains a fact that these individuals who are not corrupt find it increasingly difficult to survive within the established sub-systems of their organisational cultures, wherever corruption is prevalent. Many a time the same non-corrupt individuals are forced to look the other way, not because they subscribe to corruption *per se*, but because they are made helpless spectators by the system within which they function. At most times, their careers and families depend on their jobs and they become helpless spectators as they cannot risk losing their jobs. Public officials who hold powers to dispense anything from tenders, purchase contracts, licenses, to quotas; who interpret laws and rules for everyday business conduct, are prime targets for the demands of the “informal political systems” within their organisation. They either become easy converts to the machinations of bribe-givers and become a part of a corrupt sub-system or if they remain honest, they suffer as pariahs rejected by the sub-system. Thus, an inner circle of people emerge across all lines of a formal organisational chart engaged in a common understanding of corruption. Many a time the functional organisational chart is replaced by an informal organisational network of corrupt understanding. Gouldner (1954) has defined it as “informal social reality which is quite at odds with the formal organisation structure”. There are two variants to this type of corrupt networking within an organisation (Rose-Ackerman, 1999:82). One is the “bottom-up corruption” where higher level officials, “cover up corruption of subordinates in return for a share of their gains” (Cadot, 1987). The other type being “top-down pattern” where, “corrupt superior officials buy the silence of subordinates by sharing the gains” (Rose-Ackerman, 1999:82). If one does not belong to the administrative structure’s corrupt network, one suffers. One could be transferred to a not so lucrative posting seen as a punishment transfer, or one could be harassed in course of day-to-day work or one could face frivolous disciplinary action. In any case, one will find it difficult to secure promotions and progress in one’s career as a bureaucrat.

On the other hand, the formal business-economic structure within a society seeks contracts, orders, licenses, permits and facilities to conduct business activities, passage of

favourable laws, repeal of unfavourable laws, and lax enforcement of existing laws, to conduct business smoothly and efficiently. Money spent to secure the efficient and smooth conduct of affairs is seen as a business expense. French, German, Swedish and Danish multinational companies until very recently, claimed bribes paid overseas as tax deductible expenses². This interface between business and its informal needs and interest satisfaction, and the power of the public officials to dispense or satisfy these needs and interests form the demand side of the corruption process.

The Supply Side

Managers of multinational corporations in their transnational dealings encounter myriad structures of political governance, nations in different stages of development, societies in transition, varying market conditions, influences of local culture, tradition and aftermath of historical events (such as colonisation). Today's multinational managers operate under pressures of performance, pressures to increase returns and market shares, betterment of one's managerial career and bonuses, legal limitations, political obligations and corporate social responsibility. Typically a manager encounters two kinds of situations, either demands made by corrupt public officials or a corrupt system, or business situations that encourage the managers to take an initiative to offer bribes and indulge in corruption in order to secure business. The former is "passive corruption", the latter is "active corruption" as explained in chapter one. However, it will not always be clear to an outside observer what motivated a corrupt transaction or how a corrupt transaction took place because the facts would be known only to the participants. The infamous Lockheed case would illustrate the situations in which a business manager may find oneself in, maybe as of choice, maybe not. Carl Kotchian, who directed Lockheed's marketing strategy in Tokyo at the time of political payments by Lockheed, declared:

We can honestly say there was not a single occasion on which we proposed payoffs.

All the problems of money were raised as requests from our agent, Marubeni Trading

² France, Germany, Sweden and Denmark permitted bribes paid overseas as tax deductible expenses till

Company, and our confidential consultant, Mr. Kodama (Jacoby et al, 1977:162).

The truth would not be easy to decipher from Kotchian's statement because Lockheed Corporation used marketing services of Adnan Khassogi (having the ear of Saudi royalty) in Saudi Arabia, Prince Bernhard in Netherlands, Dassad (close to Sukarno) in Indonesia and politicians in Italy (Jacoby et al. 1977; Noonan, 1984) to secure business. Investigations by US Congressional authorities revealed Lockheed Corporation wanted to compete with its rivals in the aircraft manufacturing business by paying huge bribes in different continents to decision-makers using these middlemen of position and power (Noonan, 1984: 654-675). In case of aircraft sales to Saudi Arabia alone, Lockheed paid US\$106 million (Noonan, 1984:659). For Carl Kotchian, president of Lockheed Corporation "payments to foreigners were business costs, or an insurance policy", as he put it, "like fire risks or life insurance which any prudent man would pay. The only criterion was the return on investment" (Sampson, 1977:223). The well-documented Lockheed case illustrates the bribe-giver as an initiator of a system of corrupt influence to gain business. Lockheed may have faced demands at times but there is evidence to suggest that they did appear to initiate the act. Lockheed was not the only one; Northrop Corporation did the same (Jacoby et al., 1977; Rose-Ackerman, 1978:192). It was revealed that Lockheed's competitors too were involved in bribery when Daniel Haughton, Chairman of Lockheed Corporation said during the Lockheed investigative hearings: "Well, a lot of times we don't win, we lose" (Noonan, 1984:659), implying that when Lockheed had lost a contract, some other company had paid to secure the contract. Haughton at another point conceded that payments were "necessary in order to compete against US and foreign competitors" (Noonan, 1984:686).

Bribe-givers usually argue that the loyal corporate executive had to participate in such activities out of absolute commercial necessity and commitment to the company. Kotchian, in his personal memoir, *Lockheed Sales Mission: Seventy Days in Tokyo* (Jacoby et.al, 1977:163) wrote:

Was it really possible, from the standpoint of reality, to say, "I refuse to pay"?

they signed the OECD Anti-Bribery guidelines in 1999.

I thought of all the effort expended by the thousands of men since the conception and designing of the L-1011 TriStar; our superhuman efforts to avoid bankruptcy because of our own financial difficulties as well as similar difficulties of the engine maker (Rolls Royce); the successive defeats in both the KSSU and Atlas competitions in the European theater. I thought of the painful final efforts of the seventy days. And I thought of being told: “If you make this payment, you can surely get the order of as many as 21 airplanes.” I must admit that my moral and ethical considerations gave way to the commercial gains we had been seeking for so many hard days and weeks.

The motive to pay bribes or engage in a corrupt activity to secure interest satisfaction, be it to secure business (as in Lockheed’s case) or retain existing business or co-operate with “rent-seeking behaviour” form the supply side of corruption. The entire process of corruption comprising the demand and supply sides create sub-systems of their own within the formal participating structures (both business and administrative). For instance in the same Lockheed case, company employees who were part of the group that made payments, altered and fabricated records and created secret funds overseas to pay “consultants” such as Adnan Khassogi, themselves made money. Lockheed admitted, “to having no protection against its own employees taking a share of payments made to a foreign official by a side arrangement that part of the cash they paid, be returned to them” (Noonan, 1984:674). Such corruption spoils-sharing spreads within a company forming informal networks of corruption within a company’s formal structure.

Demand-Supply Interface:

The demand side of corruption has three important determinants: the extent of perceived business opportunities in a country, the extent of governmental regulation of the private sector of the economy, and the degree of uncertainty in the administration of governmental regulations. The supply side too has three important determinants: namely, the political stability of government, the competence and remuneration of government

officials and employees, and the amount of discretionary administrative authority government officials possess (Jacoby et.al, 1977). Within the dynamics of these determinants of supply and demand, the formal administrative structures and the formal corporate structures interact to create informal sub-systems of their own. Whether a particular corporate structure permits creation of such corrupt networks within itself in response to a corrupt network in the external environment remains primarily a matter of managerial choice. Although, a corporation is an artificial juridical person having common seal and perpetual succession analogous to Tennyson's, "men may come and men may go, but I go on forever", such decisions are a matter of managerial (human) choice. Managers who control that artificial juridical person (the corporation) can exercise choice in formulating the company's policy and ethic during this interface.

Managerial choices: ethics vs. profit-maximising

The nature of such managerial choice would depend on whether they are hard-core profit orientated or synergy-orientated managers. A hard-core profit orientated manager belongs to the "profit and shareholder value maximising" school of thinking. Some of them consider the law as the only limiting factor while some others belonging to the same school of thought (profit maximising), take on board limited stakeholder rights (viewed as constraints) as moral minimums (Singer, 1999). A synergy-orientated manager seeks win-win strategies for shareholders, stakeholders and various forms of capital in lieu of shareholder value maximisation as the only yardstick (Singer, 1999). Amartya Sen (1996:18) describes this as "multiple criteria" (MCDM) thinking thus:

Multiple objectives is a promising framework for developing economic theory in a direction that incorporates "modes of reasoning that go beyond (hard-core) profit maximisation"

An ethically responsible decision-making manager's response to the external corrupt environment would be dominated by ethical thinking, thus the company will refrain from active corruption. Corporate policy with an ethical pre-dominance would be similar to

Figure A (see Appendix III: Goodpaster, 1984) comprising of three domains embedded within each other where “ethical responsibilities” dominate the company’s interaction with the external environment, followed by the domains of legal responsibilities (rule of law and civil society) and economic responsibilities (profit objectives coupled with corporate expansion). Ethics as a corporate policy holds the prime position in the company’s interaction with society and society’s formal structures. Every interaction is examined against ethical commitments or “multi-fiduciary obligations”(Goodpaster, 1991:264) and strategies are designed to achieve “Systemic-Ethical Optimum” (SEO) outcomes (Singer, 1996). On the other hand for a manager or company which pursues narrow hard-core profit-maximisation and not SEO as their strategy, economic responsibilities (profit objectives and corporate expansion) dominate the company’s interaction with society, followed by the other two domains being legal responsibilities (rule of law and civil society) and ethical responsibilities (See figure B, appendix III) . Usually in such cases ethics is relegated to the status of another corporate public relations device and used as a “tiebreaker” (Singer, 1999) as and when required. Such companies are willing to even break the law as a matter of calculated risk. Depending on what corporate policy a business manager chooses, the company’s ethics policy is revealed in the company’s interface with the political and administrative structure. If the company chooses to provide graft as a matter of active corruption, then one can presume it is operating within the framework of figure B. If the company is a reluctant participant and is involved in passive corruption, the company still has some chance to operate within the framework of figure A. It still does not mean the company has rejected figure B but it does imply the company has a chance to regain ethical decision-making by adopting figure A. It is not denied that most times corporate managers are meeting corrupt demands as a matter of “commercial prudence” which in Kantian terms may be “prudent action” but not “the right act”. Multinational businesses will find it almost impossible to control or regulate the external environment in a host country but it would be easier for them and within their control to regulate themselves.

It is not the ordinary common person on the street who has the resources to bribe a senior government official or a politician, but it is the senior corporate executive who

commands the means to do so. In the name of securing business interest, profit-maximising managers invent and innovate bribery and perpetuate corruption either to satisfy the rent-seeking behaviour of public officials or create informal channels for achieving their narrow profit-maximising interest. Kotchian's memoirs may strike a chord of sympathy in the hearts of readers, some of whom may even justify what Kotchian, the loyal Lockheed executive, did in his company's interest. Many other managers may have similar justification or explanations to offer. However, what needs to be answered here are legal questions of managerial authority to engage in corrupt acts and ratification of such acts by shareholders. Such corrupt acts of business exigencies also create and/or nourish subsystems of quid pro quo hidden from the public eye subverting the rule of law, rules of business fair play and corporate social responsibility. Nielsen (2000:306) maintains that such:

parasitic win-win deals and relationships can be beneficial for the individuals who make the deals as well as other members of exclusive corruption networks. However, these types of reciprocal win-win relations can be very bad for those excluded and the general society.

Corruption based parasitic win-win deals become deeply embedded within society's structure over a period of time. Mauro (1995:704) describes such situations thus:

The bribe giver circumvents normal channels of distribution by offering a substantial reward for the official to evade formal procedures, and thus helps in creating a norm which delays every transaction until a bribe is presented, and also makes all transactions and investments more costly.

These systems then come to be practiced by the same companies again and again (example: Lockheed sold aircraft to 70 countries out of which operations in 41 countries needed investigation during the US. Congressional hearings in 1975). These corrupt practices come to be accepted by us and unless questioned, corruption operates just as slavery, colonisation, racial segregation, child marriages, polygamy, cannibalism and

offering human sacrifice operated. Those who pioneered the evils of slave trade, colonisation, racial segregation, child marriage or human sacrifice as a part of culture or custom also had some immediate goals to achieve. All these became a part of the social sub-systems of the times as a part of custom, commercial necessity, enlightenment, religious sentiment or cultural need, and all these wrong practices established themselves as social sub-systems within the broader social structure. It was the spirit of exploration and skill in battle that achieved colonial expansion and ran the slave trade. It was, likewise religious beliefs and cultural reasons that justified child marriage and human sacrifice. As we questioned the ethical issues in these acts, we understood the moral pitfalls of our own making. We denounced these acts and held those who perpetrated them, responsible. Today corruption is an accepted part of our social, political and commercial life in many countries around the world. Should this continue to be accepted as such without application of mind? Should the skill of the bribe-giver to seduce, to tempt, to keep supplying till the bribe-taker becomes greedier and greedier still and sells all his/her dispensing authority and morality, be called a sound business decision? Or in situations where the bribe-taker demands and creates an air of inaction without receiving a bribe, should the bribe-giver succumb? Do these situations warrant a business decision to pay a bribe or indulge in corruption? And when a business decision is made to pay or involve in a corrupt transaction, does that amount to compromise of stakeholder commitments? Or worse still, does it amount to compromise of fiduciary obligations under law towards shareholders? Let us explore answers to these questions.

Clandestine principal-agency relations:

Managerial choice between ethics and profitability as a dominant determinant of managerial action is perceived as a trade-off between ethics and managerial duties towards shareholders. Managerial imagination fails to recognise “unification of economic rationality with ethics” (Singer, 1999:8) which could be achieved by, “focussing upon the creation of new synergies that re-combine the multiple elements (Singer, 1999:8) which can create win-win strategies to resolve this conflict. Managers belonging to the hard-core profit-maximising school of thought may still reject the thought of synergy-

orientation on grounds that compliance with law is the bare necessity and any additional self-imposed rule is going to shift their attention from profit maximisation. If home country laws permit overseas bribery, then it is the accepted rule of the game while doing business overseas. However, even these hard-core profit-maximising managers fail to comply with basic legal issues of a principal-agency relationship between them and their shareholders. Legal principles at the core of principal-agency relations between shareholders and managers reveal that managers cannot justify nor seek ratification from shareholders for their involvement in corruption.

Separation of ownership from management in a corporate structure has created a principal-agency relationship between the owners of business and managers of business. Managers as shareholder's trustees are legally duty-bound to act in the best interests of shareholders and secure maximum returns on capital. The legal relationship is a fiduciary one of trust, faith and commitment as established in law. It operates irrespective of minority or majority ownership interest and applies even to those cases where the majority owners are the managers of the business because they still remain contractually agents of the minority. Majority tyranny cannot be inflicted on minority groups of shareholders merely by virtue of the fact that those majority shareholders also comprise the board of directors and top management team.

The public official on the other hand in every democratic society acts as an agent of the general public who elect the government. Public officials, whether in the legislature, judiciary, executive or at any functional level represent the engagement between themselves and the people of that country as agents and principals. The public official too cannot seek ratification for any acts of corruption from the formal political system that grants office to a public official if the underlying legal issues that create a principal-agent relationship is examined.

Both of these principal-agency relationships are mutually exclusive and independent of each other until such time as either one of the agents or both of them, act *ultravires* their respective fiduciary obligations to their individual principals. During the interface

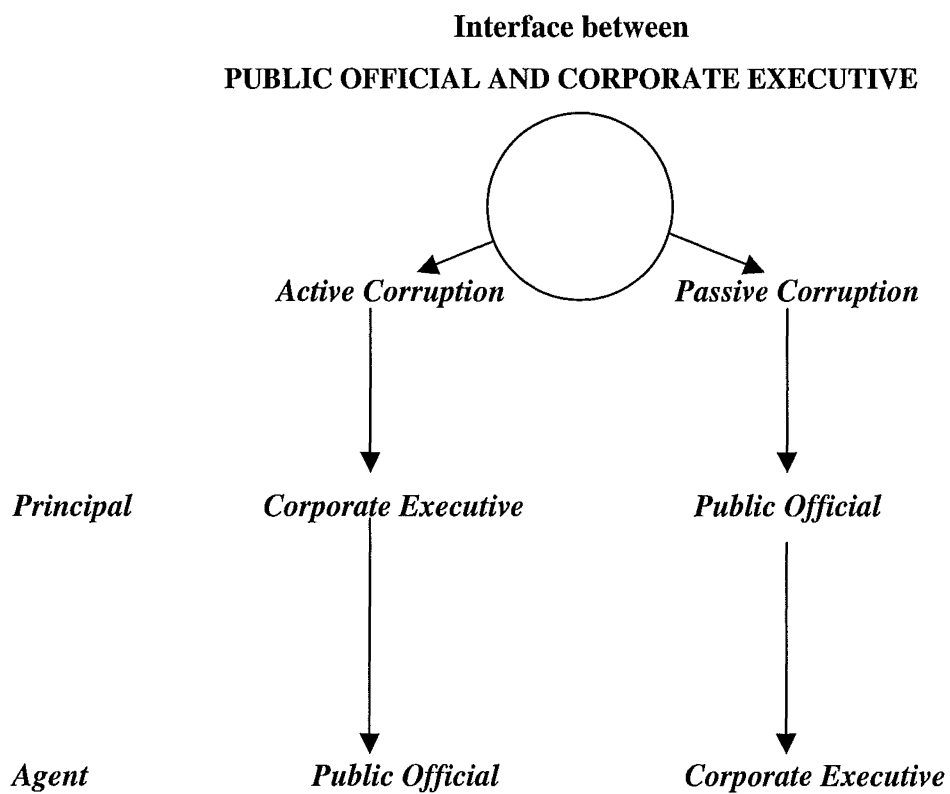
between the public official and the corporate executive, if a secret *quid pro quo* relationship is created to engage in a secret reciprocity, then it is a new relationship between the two usurping their existing fiduciary obligations. This new relationship is a secret relationship not disclosed by either one to their respective principals. The corporate executive does not disclose the amount of bribes paid (in financial statements) at any annual general meeting or extraordinary general meetings to seek shareholder ratification of corporate acts of bribery and corruption (till very recently the tax laws permitted bribe payments overseas as a business expense in France and a handful of countries, most of whom have now rejected such tax provisions based on OECD guidelines, 1999). This act of non-disclosure is in direct violation not only of different statutes in different countries but in complete violation of the fundamental principle of a corporate executive's role as a steward, trustee and agent of the shareholders. The act of indulging in such undisclosed corruption renders the *raison d'être* of a corporate executive's intended role and justification for corrupt acts undertaken without shareholder consent or ratification, completely null and void. The public official too, does not inform the general members of public that their representative functionary is making undue gain out of public office. For the public functionary who indulges in such acts at any level, it amounts to an inexcusable breach of trust, faith and betrayal of the process of democracy and rule of civil society. No electorate consents nor ratifies acts of corruption by their elected representatives or public functionaries accountable to them. Public officials like the corporate manager, render the *raison d'être* of their intended function, completely null and void. Both parties to the act simply lack the legal force behind their corrupt actions irrespective of any flimsy justification of non-disclosure on the grounds of commercial necessity or public interest or any such word sought to shield and cloak their unauthorised acts of corruption and bribery. Both agents (the corporate manager and the public official) thus betray their agency duties. The public official is not empowered to accept bribes by his/her principal (nation's electorate) nor the corporate manager is authorised to pay bribes by his/her principal (shareholders).

The secret *quid pro quo* relationship between a public official and a corporate manager undermines both the existing independent and mutually exclusive relationships

with their individual principals (electorate-public official and shareholders-managers) as explained earlier because it acts as a distinct relationship of accountability between the bribe-giver and the bribe-receiver. Noonan (1984:697) writes, “the accountability of the briber and the bribee are not to the public but to each other”. This new relationship acquires a tone of a distinct principal-agent relationship between the bribe-giver and the bribe-receiver. The public official (bribed) acts on behalf of the corporate manager’s (briber) interest with the purpose of fulfilling the terms of the agreed *quid pro quo* between the briber (business manager) and the bribee (public official). Figure 1 depicts two independent Principal-agency relations within the two formal structures, namely, the political structure and the corporate structure where each agent owes duties to their respective principals before an act of corruption between the public official and a corporate manager. Figure two depicts the new clandestine principal-agency relations emerging from the interface between the former respective agents, after both participate in an act of corruption. It can be either active or passive corruption as defined in chapter one. Whenever a corporate executive engages in active corruption, he or she takes up the role of a principal and the public official acts as an agent. Whenever a corporate executive subscribes to an act of passive corruption, (response to a demand), the public official becomes the principal and the corporate executive an agent.

Figure 1

	Corporate	State
Principals:	Shareholders	Nation's Electorate
Agents:	Corporate Executive	Public Official

Figure 2

Chapter Three: What Does Corruption Cost?

“Corruption generates negative externalities (public bads). It breaks down trust, confidence, and rule of law” Klitgaard (1988:47)

Introduction:

Corruption satisfies the informal political and commercial interest of the participants but does that mean those who are not participants end up paying the costs of corruption? Do they pick up the tab for the activities of the corrupt? Some allege corruption is good and provide instances where corruption appears to help but these examples remain context specific (example: the black market economy in erstwhile Soviet Union was seen as a market correction mechanism). Broader systemic arguments against corruption in literature, however, are far more convincing. Corruption operates against the backdrop of many evils such as money-laundering, organised crime, subversion of democracy, loss of equity, economic backwardness and human rights. What is then the optimal level of corruption for a business manager?

Corruption: Good or Bad?

The nature of corruption being a private arrangement of quid pro quo secures benefits for the participants. Corruption between public officials and business is a trade (misuse) of discretionary power of public office in exchange for bribes. According to Rose-Ackerman (1999:27), “bribes transfer monopoly rents to private investors with a share to the corrupted officials”. Magnitude of bribes and corrupt incentives are directly proportionate to benefits perceived by business. Higher the perceived benefits, higher the chances of corruption and higher would be the incentives. Scott (1972:2) has distinguished the corrupt acts of business *vis-a-vis* statute in terms of :

- a) Input stage: Corrupt influence that occurs at the stage of legislation is called the 'input stage'. During this stage business uses corrupt influence to influence passage of laws that are favourable to business or repeal unfavourable laws.
- b) The Output stage: Corrupt influence which occurs during the stage of enforcement of statute is called the 'output stage'. This can frequently involve lack of enforcement of law or application or interpretation of the law in favour of business.

Whether it is at the input stage or output stage, the briber (business) seeks to benefit. Motives could range from economic benefit to political benefit with a view to translate it into economic benefit, sooner or later. Adam Smith maintained that a free market requires the moral cooperation of its participants to help in honouring contracts, reducing market externalities, and making the entire system run smoothly (Donaldson, 1989:146). If some participants are engaged in corruption, market externalities of corruption are bound to occur. However, very few empirical studies exist that demonstrate the link between corruption and its externalities. Mauro (1997) is one such study where the author contends that corruption lowers investment and growth. Most authors like Nye (1967) discuss "possible benefits and costs" and most authors agree that costs of corruption outweigh the benefits (Klitgaard, 1988; Theobald, 1990). In any case, "ethical integrity" and its fruits cannot be operationally defined (Donaldson, 1989:147) but can be felt by us in our daily life and well-being. Let us examine some of the notable arguments for and against corruption in literature as examined by authors Klitgaard (1988) and Theobald (1990) in their respective works. Both have listed a common set of benefits of corruption as perceived by various authors. Klitgaard (1988) has categorised them into three view points, namely: the economist reminder, the political scientists' reminder and the managerial reminder. Theobald (1990) has summarised perceived benefits of corruption mainly under the labels of economic growth and political development.

Benefits of Corruption:

a) The Economist View point :

Corruption is seen as a market force which corrects market anomalies. For instance, distribution of goods by the underground (second) economy in erstwhile Soviet Union,

although corrupt, acted as a market correction mechanism. The Soviet second economy faithfully served the Soviet citizen's needs by supplying unobtainable goods and services (Altman, 1989:59-68). Government intervention in the form of price control or distribution based on a non-market criteria had led to corruption. The black market price reflected the real value of the goods and services implying 'a mandatory pricing system' (Tillman, 1968:437:43) to secure those goods and services.

Observation: The Soviet market system was a distorted market mechanism in itself. Use of corruption to overcome the inherent shortcomings and shortages in the Soviet economy benefited only a few persons or groups.

Some authors have argued that corruption leads to capital formation and as a result generates entrepreneurship. A study of private companies in Zambia revealed that public office had provided the main launching pad (capital secured through corrupt means) for a subsequent career in the world of business (Szeftel, 1983:116). Corruption is also considered as a market force and a catalyst for development. Corruption, according to Leff (1964) introduces efficiency and competition and can actually promote economic development. Bribes cut through red tape and bureaucracy reducing costs of operation and increasing business efficiency. Allocation of public resources such as import licenses, market stall places or taxi licenses to bribe givers may lead to more efficient outcomes (Theobald, 1990:118) as bribe givers would be more business-like.

Observation: These acts result in private gain against the principles of equity, fair play and justice. It also amounts to misuse of public office for private gain.

b) *The Political Scientist's View point:*

Corruption is seen as an instrument of national integration in underdeveloped countries and emerging economies where "serious communal differences such as those based upon tribe, race, caste, language and religion" (Theobald, 1990:124) exist. Scott (1972) finds corruption as an instrument of expressing and satisfying group interest in absence of political power to do so. He provides the example of Chinese businessmen in Thailand

who for ethnic reasons cannot attain formal positions of authority. Scott states that the Chinese commercial community have established informal coalitions with the Thai military and bureaucracy who take care of the Chinese business interests (Scott, 1972:22-23). Scott (1972) defines situations such as the case of the Chinese in Thailand as a 'problem of access' to power that interest groups face. He concludes that interest groups usually have two ways to gain access to power, one is violence, if they have the means and strength to engage in, and the other is corruption (Scott, 1972:22-34). Therefore corruption would be a more humane solution to violence, in order to achieve political harmony. Scott (1972:130) defines such political parties as political machine parties who draw, "support on the basis of its capacity to deliver material rewards to individuals, families, small groups and even village units." Some examples of political machine parties, provided by Scott include the Indian National Congress which ruled India for almost five decades since its independence in 1947.

Observation: Scott's argument of a choice between "violence" or "corruption" in these countries needs to be examined in light of overall administrative failure and inability to provide better administrative solutions of equity, justice and fair play.

c) Managerial Viewpoint:

Klitgaard (1988:32) finds corruption useful in some situations in an organisation from a manager's view point. He writes, "if bureaucratic rules are constraining, the organisation may sometimes benefit by the employees' corrupt circumvention of the rules." By very nature and implication of Klitgaard's explanation, this kind of beneficial corruption is context specific.

Costs of Corruption:

Each of these authors (Leff, 1964; Scott, 1972; Szeftel, 1983; Klitgaard, 1988; Theobald, 1990) have in the same works pointed out the negative side of corruption and their arguments against it far outweigh the context specific situations they have explored or cited. Theobald (1990) for instance has listed costs of corruption in terms of its effects on

economic growth, entrepreneurship, democracy, national integration and stability. Klitgaard (1988) has considered the effects of corruption in four categories: efficiency, equitable distribution, incentives, and politics. Let us examine some negative aspects of corruption enlisted by these two authors in refutation of what they had written about the benefits of corruption as well as arguments in literature against corruption.

Economic Growth and Corruption:

Corruption hampers economic growth. Empirical evidence suggest that “corruption may have large, adverse effects on economic growth” (Mauro, 1997). Corruption according to Mauro has a negative impact on two factors namely: the level and nature of public expenditure and the level of private investment. The observed effects are considerable, he writes:

in an analysis using the Business International Indices of corruption, a one standard deviation improvement in the corruption index causes investment to rise by 5 per cent of GDP and the annual rate of growth of GDP per capita to rise by half a percentage point. The evidence indicates that much of the effects of economic growth take place through the effects on investment.

(Mauro, 1997:87)

The corruption index used by Mauro is based on a simple average of two different corruption indices namely, the corruption index of International Country Risk Guide (ICRG) and the corruption index of Business International (BI). The two indices are strongly co-related ($r = 0.81$), therefore Mauro has averaged them to reduce errors inherent in the individual indices. Besides lowering private investment (Mauro, 1997), the argument of capital formation advanced by Szeftel (1983) is refuted by Theobald. Capital formation may take place but there is no guarantee nor evidence to suggest that the capital so formed is applied for desirable economic activities. Theobald (1990:126) admits, “it is by no means unusual for politicians to spirit their loot overseas, investing in property such as Mobutu’s chateaux in France or the Marcos’ extensive holdings in Manhattan; or simply to stow it away in numbered accounts”. Capital formation in the hands of such rulers and their associates are not necessarily invested for generating

economic growth or development. Capital in the hands of anti-socials like Mobutu or Marcos and their like can alter normal market rules to their advantage, usurping fair play and rule of law.

Efficiency:

For developing nations, corruption acts as an impediment to the inflow of legitimate foreign investment. Corruption attracts illegitimate money. The highest bidder of bribes for government tenders and projects usually has access to unaccounted funds. The same bidder might be the least efficient one leading to inefficient output. The results could be shoddy work, late execution, cost over runs----all to the detriment of the general welfare of the economy. Klitgaard (1988:39) emphasises that corruption in a bidding process does not make the outcomes efficient. He writes that, "corruption has its efficiency costs in terms of waste and misallocation." The highest bidder of bribes is not necessarily the most competent and qualified to deliver the goods or the service and is not paying the "true value of goods". It is the people and society of that country who will be losers when inefficient contractors (who pay the highest bribes) are awarded contracts. Klitgaard (1988:39) explains, "because of corrupt procurement policies, governments in developing countries pay from 20 to 100 per cent more than the price they would pay under non-corrupt conditions." This, he says has been well documented in careful case studies of Thailand, Indonesia and India. Rose-Ackerman (1978:109) rejects the efficiency argument in favour of corruption, she maintains that, "bribery cannot be mechanically equated with efficiency." Bribery according to Rose-Ackerman (1978; 1999) has its externalities (costs). Keefer and Knack (1995) used indices of institutional efficiency and discovered a significant direct effect on growth. Corruption therefore is likely to lead to institutional inefficiencies and stunted growth.

Equitable Distribution and Enterprise:

Corruption by its very nature of private gain by a select few, generates more wealth and concentrates power in the hands of those who already have it. Equitable distribution through a fair merit system of interaction and exchange is not possible under corrupt conditions. Corrupt officials "may create scarcity, delay, and red tape to encourage

bribery (Rose-Ackerman,1999:26). In the developing world, corruption perpetuates poverty, the 'haves' secure more power and wealth through corrupt means. Aid money and capital inflows from international institutions like IMF, World Bank and developed nations for raising living standards and eliminating poverty are diverted to purposes and projects which would yield substantial personal benefits for those in power (Rose-Ackerman,1999) . It is universally accepted that poverty is omnipresent in the first world, second world, third world or fourth world nations and it is also widely understood that the concept of absolute poverty is different from relative poverty. The absolute poverty experienced in Bangladesh, Ethiopia, Nigeria cannot be compared to the relative poverty in New Zealand or Great Britain or United States. The incidence of corruption in these poorer countries is far higher than the incidence of corruption in the first world nations as is indicated consistently by Transparency International's annual CPIs (Corruption perception indices) for each of these countries.

Democracy and Human Rights:

Corruption creates a spoils-sharing system within a nation's ruling elite. Illegal election campaign contributions and bribery of politicians can undermine democratic systems (Rose-Ackerman,1999:142). Over the years, corruption becomes the primary form of political conduct laying down strict rules of entry into the corridors of political influence. Political power and influence are the key elements of trade in the spoils sharing system. Misuse of power becomes entrenched in the political fabric of that society and the system guards itself against change. Public opinion, threats of change of power, protests against a corrupt spoils-sharing system are all silenced by undemocratic means ranging from ballot rigging to brutal force. Theobald (1990: 130) makes an universal observation:

whether we are looking at the Shah's Iran, the Bokassa empire in Central Africa, the cocaine generals of Bolivia or the Duvalier 'family business' in Haiti , there seems to be a strong inverse relationship between level of corruption and respect for human rights.

Human rights abuse is a notable characteristic common to all governments who become increasingly corrupt. These governments make every attempt to retain power. Haiti under the Duvaliers provides a good example³. Since its independence in 1804 Haiti's political history has been a series of dictatorships, each of which ended in the assassination or exile of one dictator and the installation of another. Duvalier, came to power in 1957. His rule later, was largely based on terror and coercion. He created his own irregular army of toughs called the *Tonton Macoute* and reduced his dependence on the regular army for continued support for his regime. Future coup threats from the regular army was neutralised by frequent reassignments, demotions, expulsions and occasional executions of key army personnel. A national assembly of hand picked fifty eight members existed on paper. The entire civil service was appointed, promoted and dismissed by the President (Duvalier). An official's physical survival, let alone the office tenure, depended on Duvalier's interpretation of the official's loyalty and utility. The annual budget of Haiti was the personal purse of the Duvalier family and they could dispense as they liked. Besides the official revenue, Duvalier's personal police acted as extortionist collecting money on the behalf of the Duvalier family. Loyal retainers and family members were given personal gifts and the *Tonton Macoute* was rewarded for its missions of intimidation and death (Scott, 1972:82-84).

National Integration and Stability :

Klitgaard (1988:47) concedes that, "corruption is sometimes a means for achieving political ends..... which may occasionally lead to integration and participation" . He also says, " on the other hand, when this device is widely used, it leads to popular alienation and political instability". Any political government that permits corruption to be the voice of various interest groups and permits it to grow in the fear of destabilising the existing political structure does not realise its folly, until it is too late. Corruption has negative externalities, it is like a termite which eats the foundations of any society in which it operates. Corruption weakens and erodes institutions of justice and democracy

³ Haiti was ruled from 1957 to 1986 by Francois Duvalier (popularly known as 'Papa Doc') and Jean-Claude Duvalier or Baby 'Doc' Duvalier. Jean-Claude fled the country in February 1986 after a major revolt and US military intervention. Haiti still remains amongst the poorest nations on earth.

leading ultimately to political instability and dissent. A noted example would be the chain of corrupt political events that lead to Pakistan's disintegration into two parts in 1971.

Organised Crime and Money Laundering:

Criminal activity by a group of individuals is normally referred to as organised crime. Words like 'mob' or 'syndicate' in USA, 'underworld' in some other countries and 'mafia' or 'mafiosi' in Italy denote organised criminal activity. Organised criminal activity includes stealing, kidnapping, brewing illicit liquor, collection of protection money, contract killing, contraband smuggling, human trafficking, drug dealing, drug growing and distribution, clandestine arms supply, money laundering and assisting terrorists to commit acts of terrorism. Drugs are the single biggest money-earner for organised crime. Every year people all over the world spend an estimated US\$ 500 billion to buy drugs (Clutterbuck, 1995:3). For every \$100 spent for purchasing a gram of cocaine or heroin, more than 99% of the amount paid goes into the hands of criminal gangs (Clutterbuck, 1995:3). If this estimate based on work of different researchers and international law enforcement agencies is taken as true, it would mean that organised crime has access to a mind boggling amount of a little more than US\$ 495 billion every year from a single source of criminal activity: *the illicit drug running and distribution*. This amount is far in excess of the GDP and national budgets of many countries around the world. What happens to this sort of money? Clutterbuck (1995:5) believes that criminals use their, "wealth as a means of securing institutional power through corruption of senior politicians". Rose-Ackerman (1999:23) contends that "organised crime groups can use the profits of illegal enterprise not only to assure complicity of public officials but also to infiltrate legal businesses". Tax Havens assist in the conversion process of tainted money or unaccounted money into clean money. They provide a money-laundering conduit for investing crime-money into legitimate frontages or for buying political influence and power. Crime-money deposited in banks located within tax havens can be transferred electronically, at a short notice, to almost anywhere in the world. Repeated transfers between several accounts in different continents can make it impossible to trace the original source of transfer in the maze of banking and tax haven privacy laws which conceal crucial information. The tainted money comes back into

circulation under new owners (criminals) through investment in legitimate frontages such as casinos, the movie industry, hotels, restaurants and fast food joints, farm investments, finance companies and banks like the BCCI, real estate investments, stock exchange and currency speculation. All these frontages also convert the earnings from drugs and crime to legitimate business income. Accounts are audited, taxes are paid, tax shelters are availed of by these frontages, ironically to provide the ultimate stamp of legitimacy to these earnings. These frontages acquire legitimacy through corruption and use of corrupt influence. Bribe payments are usually made by multinationals through consultants (for a fee) who use tax havens and/or such legitimate frontages (owned by criminals) to make these illicit payments.

Is there an optimum level of corruption?

Corruption cannot be completely eliminated (Klitgaard, 1988; Rose-Ackerman, 1978). Klitgaard (1988:27) believes that the optimal amount of corruption is not zero. He explains that corruption inflicts social costs on society, while on the other hand anti-corruption efforts cost money. Social costs of corruption, according to Klitgaard (1988:26) include, “breaking down norms of behaviour, creating greater inefficiencies, worsening the distributions of income and power and so forth” implying that it is left to the reader’s judgement to take on board any perceived social costs in one’s calculation based on society’s state of affairs. “Costs of removing corruption” as explained by Klitgaard (1988:27) includes both direct costs in terms of monetary expenditures and staff costs, and indirect cost in terms of hampering the organisation’s objectives. Klitgaard believes that it remains feasible to pursue anti-corruption efforts so long as the social costs generated by corruption exceed the cost of removing corruption. Every unit of anti-corruption effort will reduce some amount of corruption and in turn reduce the social costs inflicted by corruption. However, a stage is reached when the cost of removing corruption (anti-corruption efforts) will be higher than the social costs inflicted by corruption. The optimal amount of anti-corruption efforts will therefore not be infinite nor the optimal amount of corruption in society equal to zero. Klitgaard (1988:26) has provided a schematic description of ‘the optimal amount of corruption’ (see Appendix

IV). The optimal amount of corruption is the intersection point 'q' where the two curves depicting "costs of corruption" and the "costs of removing corruption" intersect. The intersection point of these two curves indicate the least-cost combination of corrupt activities and efforts to reduce corruption (Klitgaard,1988:26).He states that zero corruption will not be a practical possibility as the costs of controlling corruption would increase disproportionately with every new unit of corruption that is reduced.. Therefore from a society's point of view corruption removal efforts will never be infinite and amount of corruption will never be equal to zero.

A Manager's optimum level of corruption:

Klitgaard's has explored the optimum level of corruption based on external corruption control mechanisms *vis-à-vis* the public official. My thesis focuses on the multinational business manager and seeks to motivate an *internal review of one's (the manager's) persona* through the adoption of a conscious stakeholder approach towards corruption. Every unit of corruption that any manager participates in, will result in deterioration of the manager's own moral well-being and psychic utility. Every increasing unit of participation in corrupt activities will take the manager's conscience levels further away from morality and virtuous living. The more a manager participates in corruption, the further he or she walks away from one's moral conscience and moral reasoning. Besides, some managers may suffer from severe physical and mental stress as result. At times, senior executives have killed themselves in anticipation of exposure of their corrupt acts. Eli Black, chairman of United Brands Corporation committed suicide by jumping out from the twenty-second storey of his office building in New York fearing imminent exposure of a \$1.25 million bribe paid to President (General) Oswaldo Lopez Arellano in Honduras (Noonan, 1984:656). Lockheed's treasurer shot himself to death at the first signs of a major investigation by the US authorities. (Noonan, 1984:657). The costs of removing corruption i.e. self motivation to keep oneself away from corrupt activities is always going to be less than the cost corruption can inflict on one's own moral well being. For a business manager, therefore, the *optimum level of corruption is zero*.

Chapter Four: The Decision-making Model

“Often what the general manager seeks and needs is a more or less orderly way of thinking through the moral implications of a policy decision” (Goodpaster, 1984:3)

Introduction:

This chapter provides a simple, easy-to-use decision model for day-to-day use by business managers confronted with a decision: whether to participate or not in a transaction involving bribery and/or corruption. It attempts to remove the rule-of-thumb approach to handling corruption-related managerial decision-making and provides a contextual meaning to one's decision. The model draws on existing literature in the area of business ethics and therefore provides an opportunity to assess the impact of one's decision. It can assist in the effective discharge of one's corporate social responsibility. It does not intend to subvert the rule of law nor aim to rewrite the universal definition of ethics nor aim to provide a spiritual therapy for acts of corruption undertaken in circumstances that this model may seem to permit. The decision-tree aims to make managers think more effectively from an ethical point of view to address human rights issues better *vis-a-vis* corruption-related decisions.

Multinational Business and Integrative Social Contracts Theory (ISCT)

The world is no longer a place where events in a given nation are confined to that nation's borders. Business activities are globalised and cross all borders. Researchers at the United Nations have identified at least 35,000 multinational enterprises and 170,000 foreign affiliates (Emmott, 1993:555-8). Multinational businesses control a substantial part of the worldwide business assets. In 1990, the largest 100 multinationals accounted for \$3.1 trillion of world-wide assets. Of this amount, \$1.2 trillion was not in the home countries of these corporations (Emmott, 1993:555-58). These companies control 40 to

50 percent of cross border assets between all countries (Emmott, 1993). Multinationals thus possess substantial financial clout, and are in a dominant position to influence global ethics of doing business. Multinational businesses by their nature operate from headquarters in a single home country with operations in different host countries. Business policy and operational decisions taken at corporate headquarters have a profound impact on the commercial as well as social outcomes in host countries and the home country. When Lockheed Corporation chose to pay bribes through middlemen to Japanese government officials, little did the corporate top brass of Lockheed imagine that Prime Minister Tanaka's government would be brought down by the Lockheed bribery scandal in Japan. Carl Kotchian could never have imagined that his company's actions (and his own) would change the way American companies would be required to do business in later years as a result of the passage of Foreign Corrupt Practices Act (FCPA). The aftermath of Lockheed's bribery scandal is not confined to the passage of FCPA legislation in United States or the fall of Prime Minister Tanaka's government in Japan; it acted as a major catalyst for anti-corruption efforts by the US since then and this in turn led to numerous international efforts during the past two decades.

The Lockheed investigations proved that irrespective of the nomenclature applied, a bribe would be called a bribe whether in the USA, Japan, Holland, Indonesia or Italy. Such basic ethics are common across all nations and cultures (Donaldson, 1989) irrespective of the arguments offered. However, in the same Lockheed case, Adnan Khassogi was questioned by US authorities but not prosecuted by either party (US or Saudi Arabia) because payments to Khassogi were within the accepted norm in the Kingdom of Saudi Arabia. A universalist would find moral fault with the situation where Khassogi was not prosecuted while Prime Minister Tanaka was jailed. Universalists would make no exception to what is called bribery and punishment for it, while relativists may find exceptions based on diversity of cultures and norms of acceptance. Donaldson & Dunfee (1999:49) feel that these disagreements between universalists and relativists have created highly complex positions in "the practical realms of foreign policy and business practice" and this in turn can lead to confused decision-making. Multinational business managers are, therefore, either confused by or forced to take

shelter under these practical realms of business practice. While doing business overseas, corruption is one such complex issue that can raise all sorts of exceptions from relativists against universalists and add to the confusion. Donaldson and Dunfee (1999) have attempted to reach a common ground of understanding between the demands of universalists and the objections of relativists through their Integrative Social Contracts Theory (ISCT). Donaldson and Dunfee (1999:49) explain,

ISCT avoids the extremes of either position by recognising the dynamic relationships among the authentic ethical norms of diverse communities, bounded in turn by universal principles called hypernorms”

The essence of ISCT thinking is depicted in Appendix V. At the core of ISCT lies “hypernorms” which form the basic global ethics of interaction. The authors believe that society operates on some basic norms which are universally recognisable as such, and whose presence is always assumed in the background of any contractual relationship or interaction. Basic norms help build up some other norms which are not as universal as basic norms but are accepted as consistent norms by a vast majority of people. These are called “consistent norms” as they are substantially consistent with hypernorms. Norms in some cultures which are mildly conflicting with hypernorms but are not totally inconsistent with hypernorms, form the “moral free space.” These norms, according to Donaldson & Dunfee (1999:222), “express unique, but strongly held, cultural beliefs” and allow room for relativists to address exceptions. However, “moral free space, in turn, implies the need to precede judgement with an attempt to understand” (Donaldson & Dunfee, 1999:231). Norms that are substantially or completely incompatible with hypernorms are called illegitimate norms. Donaldson & Dunfee (1999:222) call them “values and practices (that) reach a point where they transgress permissible limits”. These illegitimate norms need to be rejected completely by both universalists and relativists.

ISCT has tremendous practical relevance for multinational businesses which face confusing stakeholder claims from universalists and relativists while addressing ethical issues such as corruption. Donaldson (1989) believes that some basic ethics are

common across all nations and all cultures and can be termed global ethics. Wartick and Wood (1998:143) maintain that “ it is not possible to take an ethically neutral stance in the arena of international business”. Wartick & Wood (1998:46) have emphasised this need:

to understand the global business environment, managers must be able to go beyond the traditional economic and technological factors in business management. To avoid unnecessary risks and to recognise opportunities, they must be able to appreciate the sources and impacts of changes along all dimensions of the business environment—social, economic, political, technological, ecological---in every country with which they are involved.

For instance, pollution is a global problem threatening all nations irrespective of their individual stages of development or awareness. Suppose a multinational company in home country ‘x’, where manufacture, sale and use of pesticide ‘a’ is banned chooses to manufacture the same pesticide ‘a’ in another developing country ‘y’ whose law permits manufacture of pesticide ‘a’ then there is no guarantee that residues of the banned pesticide will not surface in the food cycles of home country ‘x’ by way of import of food stuffs from nation ‘y’. In the aforesaid situation the multinational company has ignored the hypernorm of basic human rights relating to health matters in its decision-making process. The world is more akin to a global village, where incidents in one corner of the globe can affect the lives of millions elsewhere even though incidents may seem unrelated and geographically distant. Such has been the case with the above pesticide manufacturing company. Recognition of hypernorms inherent in this case would have helped the multinational discharge its stakeholder obligations effectively.

Global Stakeholders and Managers:

The success of any multinational business, irrespective of the nation and the culture it functions within, depends on its stakeholders. Stakeholders, according to Freeman

(1984:24), include any “group or individual who can affect or is affected by the corporation”. Today a multinational company’s actions, and repercussions of those actions, are not confined to the borders of any single nation. A multinational’s stakeholders can come from a diverse number of nations and cultures. These stakeholders are groups and individuals who benefit from or are harmed by, and whose rights are violated or respected by, corporate actions (Freeman, 1984). Whenever a multinational executes a decision involving any activity of corruption or bribery, whether directly or indirectly, whether onshore or offshore, unknown stakeholders whose presence has never been ascertained earlier, can be affected.

The stakeholder environment is thus the entire societal environment and structure within which every organisation functions. A multinational company is at all times a part of a global social system, constantly in a process of being able to influence and be influenced. No company, whether big or small, can argue that it is self-made or self-created and is therefore oblivious to its surroundings. Realism and humility demand that business managers controlling any corporation recognise that they as individuals and the company that they work for as an artificial juridical instrument in their control draw on resources from society and the social systems within which they function and intend to thrive. A corporation as a distinct economic entity has the good fortune to draw from society’s existing reservoir of knowledge, human resources and material resources created concurrently, and in the past, representing the toil of past generations and our heritage. Knowledge is incremental and subject to correction over time. It is therefore obligatory for a corporation and its control mechanism---business managers to give back and enrich the same reservoir of knowledge, human and material resources they are drawing from, and to leave behind for future generations not a sad legacy of regret and pain but a substantial legacy for betterment and enrichment of humankind---both economic and spiritual. In this sense, I would like to extend Freeman’s (1984) classical definition of a stakeholder to include all “those individuals, groups or nations of future generations of humankind that would be affected (i.e. harmed or whose rights violated) by the corporate actions in current times”. Thus, our future generations too are stakeholders in a practical sense of the term.

Corruption, a global stakeholder issue:

The global stakeholder environment demands attention to the twin issues of corruption and bribery. In 1979, when the US attempted to table a convention at the U.N. against corruption, most nations thwarted it, accusing the US of imposing its moral standards on the world (Pieth,1999). Two decades later, a number of countries have come forward to fight corruption under the aegis of Transparency International, the United Nations, the OECD and nine international anti-corruption conferences. The OECD Convention to combat bribery went into effect on 15 february,1999. Thirty-four countries have signed the convention including all major OECD countries comprising of the world's biggest economies. "The Convention makes it a crime to offer, promise or give a bribe to a foreign public official in order to obtain or retain international business deals"⁴. The trend is clear that evil effects of corruption are being felt across diverse nations and cultures, affecting commercial interests, environmental issues and human rights, raising ethical concerns. Today's multinational managers have to take their cue from these international events occurring in the stakeholder environment which treats corruption as a global issue. Elliot (1997: 175) calls corruption a prominent "global issue," and all global issues are the concern of any multinational corporation that recognises its stakeholder obligations because multinationals are best positioned to understand and address global concerns. Every time multinational managers encounter corruption, they need to evaluate the impact of their decisions in the context of their company's stakeholder commitments to the economic and social environment.

Managerial need for a Decision-making Tool:

Literature does not provide a ready-to-use managerial decision-making tool in face of corruption to assist a manager understand the "moral implications of a policy decision" (Goodpaster, 1984:3) nor " a perspective and a language for appraising the alternatives available from an ethical point of view" (Goodpaster,1984:3). Whenever a manager is

faced with the question of whether to participate in a corrupt transaction or not, the decision-making manager relies on either one or combination of the following:

Corporate Policy documents:

The manager can refer relevant corporate policy documents to understand what possible course of action could be adopted within the policy framework. Usually corporate policy documents provide general guidelines and spell out “do nots” in case of corruption related issues. These guidelines may not be able to provide uniform solutions to diverse business situations that bring up ethical conflicts. For instance, company X is a fruit importing and distributing company with a clearly worded corporate policy of “no bribes”. It opens up a new branch in country Y where customs officials always expect a facilitating payment to clear every consignment. Company X learns that their consignments will not be cleared by customs without a bribe. The company has a choice of either permitting the fruit consignments to rot and lose money or pay the customs officials. Such situations are bound to confuse the judgement of any decision-making manager.

Feedback from local managers:

Decision-making managers rely on feedback from local managers. Such feedback is usually based on fears and perceived threats to company’s operations, profitability or possible loss of business opportunities. Feedback from local managers could also be motivated by personal gains expected to be made by them through corrupt transactions entered on behalf of the company.

Past experience with corruption:

Decision-making managers who have first hand experience of corruption may use past personal experiences or personal encounters with similar situations as a guideline to formulate a decision. At times, situations in hand may be very different to past experiences.

⁴ OECD website:<http://www.oecd.org/daf/nocorruption>, June, 2000.

Personal Career advancement:

Securing a contract or a bid may be very crucial for the survival of the decision-making executive. Professional realities faced by managers could range from fear of loss of business, non-achievement of company's growth and return targets, non-performance at the stock market to personal loss of managerial performance incentives and career advancement.

Thus, the decision-maker operates in a situation of "positional objectivity" (Sen, 1993). Sen (1993 :126) believes, "what we can observe depends on our position *vis-à-vis* the objects of observation". The observant (decision-making manager) cannot separate oneself from the prevalent schemas in his/her own mind and the above schemas are peculiar to the decision-maker's position. Decisions are therefore based on motivated feedback, negative experiences or fear of loss of business and opportunity, implying coerced decision-making. These managerial decisions involving corruption and bribery are responses to a perceived situation, without questioning the perception itself. Wartick and Wood (1998:143) have mentioned gullibility about local business conditions to ethnocentric expectations based on past experiences as factors influencing bribe payment decisions. All in all, corruption related-decision-making by managers, especially multinational managers is one of positional objectivity which cannot address the concerns of the global stakeholder environment nor recognise the hypernorms involved in the decision-making process. For instance, the passage of the FCPA (Foreign Corrupt Practices Act) in the seventies was expected to act as a major deterrent to prevent US companies from indulging in bribery and corruption overseas. Subsequent prosecutions under the FCPA reveal instances where US companies have paid bribes and indulged in corrupt practices abroad. Some of these include names like Lockheed Corporation (now Lockheed Martin Corp), who are repeat offenders (Elliot, 1997:205). During the seventies Lockheed's corrupt practices overseas led to US Congressional investigations and passage of the FCPA. Even after two decades the company had not altered its modes of securing overseas business. In 1995, Lockheed admitted to bribing an Egyptian official to secure business (Elliot, 1997:205). It would be almost impossible to assess the motives

and justification of each defaulting company, but in almost all cases it would probably be revealed that decisions to break the law (the FCPA) and risk severe penalties and loss of reputation were responses to managerial perceptions of business conditions.

The decision-making model:

A) Revisiting Active and Passive corruption:

I have defined active corruption and passive corruption in Chapter one of this thesis. Active corruption is a situation where the bribe-giver takes the initiative to offer bribes or engage in corrupt activity ranging from lobbying, contribution to election campaign funds, undisclosed gift-giving, providing goods and/or services free of charge or at low prices (without any commercial justification) to downright bribery in cash or kind. “Offer” is the key word to comprehend this phenomenon. If a manager makes an offer either overtly or covertly or intends to create conditions for a demand of graft, it amounts to “active corruption”. The word active denotes the nature of the active role chosen by the giver of graft. Passive corruption denotes situations where the bribe-giver does not take any initiative or implement any design, whether overt or covert, to provide graft in the form of lobbying, contribution to election funds, provision of free goods or services etc or bribes in cash or kind. The bribe-giver ends up paying because of the demands made by the bribe-receiver, and paying up appears to be the only solution for the bribe-giver’s interest or peace of mind. “Demand” is the keyword to indicate passive corruption. The word passive denotes the passive role played by the bribe-giver in the transaction.

These two words “active and passive” define the bribe-giver’s intent and signify the role consciously chosen by the bribe-giver or the would-be bribe-giver. Ethical conflict in justification or rejection of any corrupt activity is eliminated by the usage of these two words. If one engages in “active corruption”, one can safely presume that ethical reasoning was not an ingredient in the decision-making process. If one engages in “passive corruption”, ethical reasoning still has a chance to perform its part and still has a chance to lead the decision-maker to ethical outcomes. The bribe-giver who engages in

active corruption is not ethically conscious and does not give ethics and stakeholder concerns a fair chance. Managers who belong to this “school of action” may find it difficult to adopt my decision-making model. Those managers who subscribe to passive corruption and find it difficult to take corruption related-decisions harbouring ethical conflicts in the process might find my decision-making model very useful as a day-to-day managerial tool. Managers who encounter situations that encourage them to formulate active corruption but would like to avoid active corruption will find utility in my decision-making model.

B) Corporate Social Performance:

The concepts of corporate social responsibility and stakeholder theory are well established in management literature (Goodpaster, 1991). Corporations derive their right to function in any society from the society in which they function. Wartick and Wood (1998:72) explain that a corporation’s right to function in a society is based on the principle of legitimacy with reciprocal responsibility, thus:

Economic activity, however it is organised, requires some exercise of power over materials, natural resources, and people. It is this power that is at issue in questions of legitimacy. Do businesses have a right to exercise power over those resources they require? If so, they have social legitimacy. But the right to exercise power is matched by a reciprocal responsibility to use the power in appropriate, socially sanctioned ways and not to use it in unapproved ways.

Multinational corporations draw sanction for their global operations from the global society and not from the home country alone. They cannot choose anything other than universally acceptable ways of doing business (hypernorms) if they intend to maintain legitimacy of their global operations. Multinational managers command substantial financial, material and political resources and it is their choices that influence outcomes for the global stakeholder. It all depends on their ability to make choices in every area of management function, be it economic, legal, social or ethical, that brings forth operational results for their companies and stakeholder outcomes. Appropriate managerial discretion based on recognition of hypernorms is at the core of any decision-

making process required to maintain operational legitimacy *vis-a-vis* the stakeholder. To engage in any corrupt activity (the exception being payments made to extortionist in life and property threatening situations) needs to be evaluated against universal hypernorms, if corporations intend to preserve the legitimacy of their corporate operations.

Corruption and the incidence of corruption have evoked growing concern from the global stakeholder environment. Multinational corporations cannot ignore such stakeholder concerns and continue to engage in corrupt activities, although ostensibly a necessity to retain or gain market share or business appears to be inherent. Corruption results in negative social outcomes such as environmental damage, sustenance of dictatorial regimes, abuse of human rights such as engagement of child labour. Corruption has increasingly assumed global proportions and is a systemic problem not merely confined to the act itself, the person committing it, or to a particular geographical location. Recognition of its global ramifications has increased international efforts in combating corruption during the past two decades. Underlying this concerted global action is a simple fear that corruption maybe the single biggest “mother” source of all problems facing us now and in the future. Corruption plays an important role in the perpetuation of global problems such as organised crime and everything that goes with it, diversion of public resources for private benefit and consequent undermining of poverty elimination objectives; military expansion and the arms race; undermining of civil governments by dictators (both civil and military); undermining the rule of civil law and by criminal forces, and criminalisation (infiltration by criminals and crime money) of political administrations, business corporations and all human institutions. Researchers at Transparency International have found an high correlation (0.75) between incidence of corruption and environmental degradation⁵. Therefore, corruption originating from any corporation needs to be seen as an instrument that can violate basic hypernorms in the global context.

Managerial discretion, according to Wartick and Wood (1998:76), can be exercised by using “tools that allow managers and companies to put the principles of corporate

⁵ Transparency International’s website: <http://www.transparency.org> , January, 2001.

social responsibility into action.” Wartick and Wood (1998) recommend scanning the environment, understanding and addressing the stakeholders’ issues and concerns, and managing emerging issues and trends as steps that managers can take to evaluate an issue concerning corporate social responsibility in hand. Corruption is an emerging global issue of major concern that forms a part of corporate social responsibility performance. Bribery is an issue that has, “ringing significance for contemporary global business” (Donaldson & Dunfee, 1999:223). Ethics as a moral commitment to the well-being of human society is already a recognised part of business’ commitment to society. Corruption and bribery are ethical issues and need to be expressed in more broader terms than narrow commercial ones or as offshoots of inter-cultural differences.

C) Corruption and Human Rights:

Corruption by its very nature of “private gain” violates rights of other individuals, groups and nations. It is the very nature of corruption for “private gain” that results in general detriment, and many a time a corrupt act can violate human rights basic to any society and any culture. It is the universal duty of every corporation to honour certain basic human rights common to all societies, and therefore every act of corruption needs to be evaluated against these basic human rights (hypernorms) by a decision-making manager. One can call it the starting point of our engagement with corruption as a global issue. Evaluation of a corrupt act from a human rights point of view is essential. The private gain of global corporations through a corrupt act can encroach upon certain basic rights of individuals, who under most circumstances cannot fight against a global corporation.

The rights which are basic to all of us are contained in United Nations’ Universal Declaration of Human Rights. However, for the purpose of this thesis I have drawn on basic human rights as understood in business ethics literature. Henry Shue (1980:170) in *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, has insisted that “no individuals or institutions, including corporations, may ignore the universal duty to avoid depriving persons of their basic rights” Shue (1980) has used some simple propositions to define a basic right. These propositions are:

1. Everyone has a right to something.
2. Some other things are necessary for enjoying the first thing as a right, whatever the first right is.
3. Therefore, everyone also has rights to the other things that are necessary for enjoying the first thing as a right.

Donaldson (1989:75), using Shrue's propositions in conjunction with James Nickel's work on human rights has enlisted certain propositions which can be used to ascertain a 'fundamental international right'. The propositions are:

1. The right must protect something of very great importance.
2. The right must be subject to substantial and recurrent threats.
3. The obligations or burdens imposed by the right must satisfy a fairness-affordability test.

In applying the fairness-affordability test before classifying a right as such, Donaldson's (1989: 81) definition of the term is reproduced here:

'fairness-affordability' condition to mean that for a proposed right to qualify as a genuine right, all moral agents must be able under ordinary circumstances, to assume the various burdens and duties that fairly fall upon them in honouring the right, and, further, that some "fair" arrangement exists for sharing the duties and costs among the various agents who must honour the right.

Based on these three criteria, Donaldson (1989:81) has classified the following as 'Fundamental International Rights':

1. The right to freedom of physical movement.
2. The right to ownership of property.
3. The right to freedom from torture.
4. The right to a fair trial.
5. The right to non-discriminatory treatment (freedom from discrimination on

the basis of such characteristics as race or sex).

6. The right to physical security.
7. The right to freedom of speech and association.
8. The right to minimal education.
9. The right to political participation.
10. The right to subsistence.

Donaldson states that this is a 'minimal list' and this is not to be construed as the only rights, ignoring the existence of legal rights and nation-specific moral rights.

In the context of international business operations and multinational corporations, the above list of fundamental rights calls for application of mind and sound judgement on the part of managers in recognising their corporate duties essential to protect and preserve these basic fundamental human rights (an undisputed hypernorm). Every time a corporate decision involving use of corrupt means to gain a business advantage in the market place comes up for approval, the corporate manager can use this list of fundamental rights as a checklist to ensure that none of these rights would be violated by a corporation's corrupt acts. Such an exercise will provide a permanent solution to any ostensible conflict of interests between the compelling circumstances of business (and duty towards shareholders) *vis-a-vis* a stakeholder's fundamental human rights.

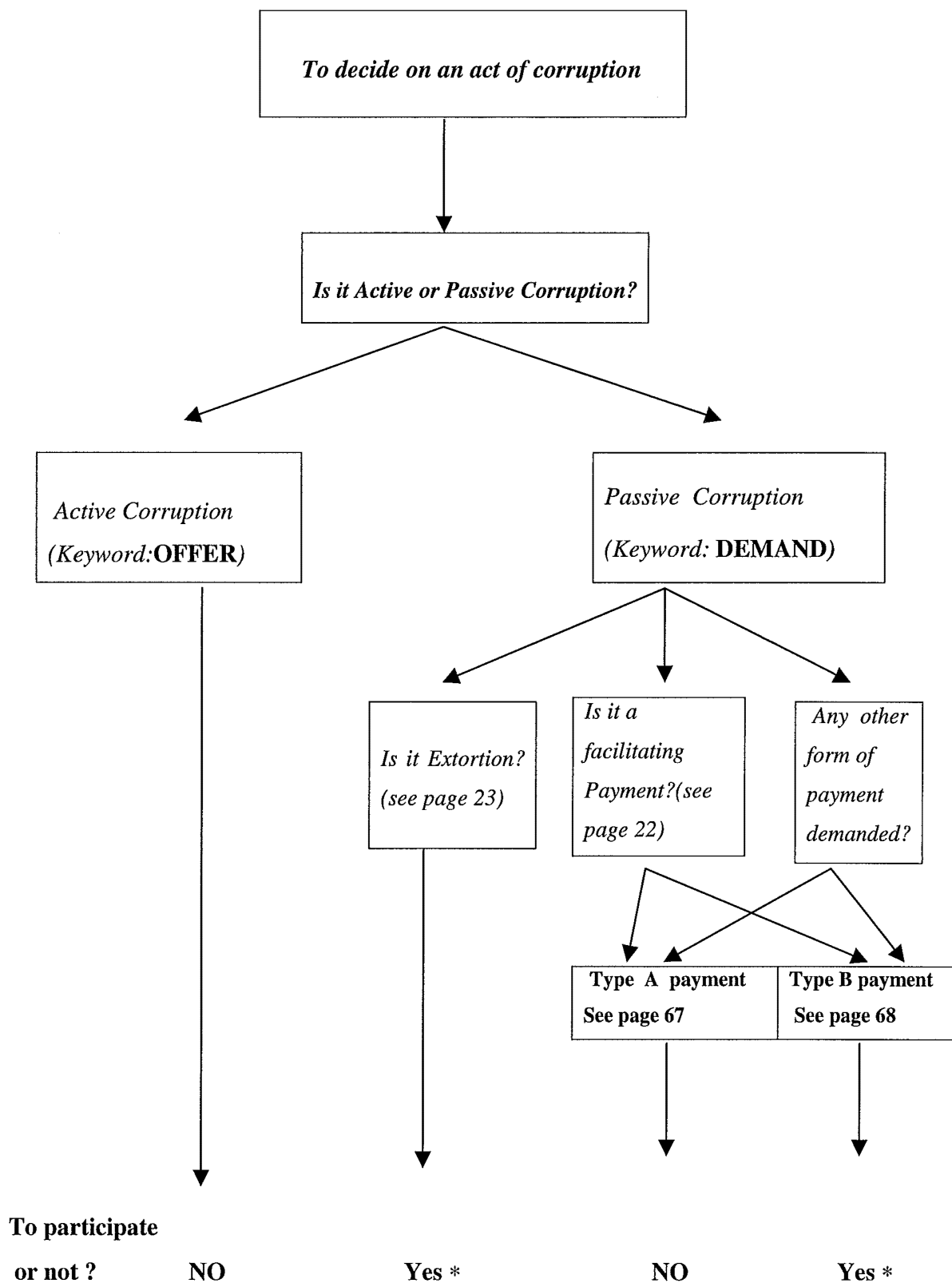
Managerial beliefs and choices result in business behaviours that have consequences for stakeholders, the natural environment, and whole societies; it is therefore essential that managers make informed choices, informed by their stakeholder obligations and their awareness of the external environment in which they operate. Wartick and Wood (1998:17) have developed a "Corporate Social Performance Model" which establishes the nature of relationship between corporate behaviour and outcomes of such behaviour, including social outcomes. If corporate behaviour outcomes meet social obligations, it is said to have honoured its stakeholder commitments under Wartick and Wood's model. If corporate behaviour (decisions) results in negative social outcomes, especially violation of basic human rights, the corporation is said to have failed in its corporate social performance obligations and stakeholder commitment. Adler & Bird (1989:265) believe

that organisations can “implicitly and explicitly create their own external environment as much as respond to it”. The external environment for any multinational is the global business, economic, social and human environment. Adler and Bird (1988:265) explain that the “firm’s best interest is served by creating (rather than simply reacting to) a positive external environment”. The professional challenge, then, for any multinational manager lies in creating and defining a standard of action or a standard of decision-making every time one encounters corruption-related issues. The rule-of-thumb approach based on negative fears of losing business or losing one’s market share needs to be replaced by a rational way of decision-making (ISCT based) while handling corruption-related issues. Integrity in the application of ethical reasoning is essential for ethical standards of thought and evaluation to define global moral standards. Multinationals are in the best position to define global standards; therefore as Adler & Bird (1988:265) write,

From the perspective of integrity, it means that it will become incumbent on global corporations to broadly define global standards of excellence for creating and working in the worldwide environment.

The global standards have to evolve over a period of time after much input and practice. However, as a starting point to cope with the issues of human rights as a basic stakeholder concern and basic hypernorm in corruption-related decisions, the following decision-making tree will help:

Decision-making tree



Key to definitions:

Active corruption as defined in Chapters One and Four of this thesis, pages 23 and 59 respectively.

An indicative list of acts implying active corruption are:

- a) Election Contributions with a view to obtain reciprocity.
- b) Marketing Commissions (undisclosed in public or statutory documentation).
- c) Lobbying with a view to elicit an act of nepotism or favouritism.
- d) Nepotism.
- e) Offer of bribes in cash or kind. Offer includes insinuation or seduction.
- f) Undisclosed gift-giving.
- g) Offer of any kind of quid pro quo designed to gain an unfair advantage.

Passive Corruption as defined in Chapters One and Four of this thesis, pages 23 and 59 respectively.

An indicative list of what could comprise passive corruption is as follows:

- a) Facilitating payment.
- b) Payments made to extortionist under threat to life, property or business operations.
- c) Bribes sought by public officials under a subtle threat to business operations.
- d) Any other payment where demand, whether overt or covert, is made by the bribe-receiver and at most times under threat to business operations.

Extortion as defined in Chapter One of this thesis, page 23.

Facilitating Payment as defined in Chapter One of this thesis, page 22.

Any other payment: Includes petty payments demanded by lower level functionaries in a bureaucracy or a public structure.

Type A: Any payment or act of corruption that will violate either directly or indirectly a stakeholder's "fundamental human rights" (Donaldson, 1989:81) as listed on page 63/64 of this thesis.

Type B: Any payment or act of corruption that does not violate either directly or indirectly a stakeholder's human rights as listed on page 63/64 of this thesis.

NO: The word, “ NO” in the decision-tree indicates a No to any form of active corruption and payments of Type A.

Yes*: Indicates a conditional “Yes” in the decision-tree and implies payments to be made if and only if the payment is unavoidable under the circumstances, and is not a Type A payment but a Type B payment. The word “Yes” also implies that stakeholder-conscious multinational corporations will support anti-bribery initiatives by Transparency International and OECD and make sincere attempts to bring about systemic changes in corruption-ridden host countries.

Conclusion:

Multinational corporations have global stakeholders, both of present and future generations. It is absolutely essential that in their discharge of global stakeholder obligations managers do not lose sight of basic hypernorms and social outcomes of their actions. Global society provides legitimacy for multinational business operations; therefore, legitimacy provided by society needs to be reciprocated by legitimate corporate acts (honouring hypernorms). Corruption is an illegitimate act of private gain and most times at public cost. Such costs cannot be inflicted on the global stakeholder (both present and future generations of stakeholders). The stakeholder environment is seeking change in the actions of global corporations as is evinced by the anti-corruption activities at the international level. It is therefore time for managers to find ethical solutions to the problem of corruption if they intend to discharge their stakeholder commitments. A good starting point could be to ensure that managerial actions, choices and decisions *vis-à-vis* corruption are not active but passive and take into account respect for the basic human rights of any stakeholder.

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Appendix I

TRANSPARENCY INTERNATIONAL'S BRIBE PAYERS INDEX

(source : website: www.transparency.org, March, 2000)

Bribe payer's Index 1999

(score 10 represents a perceived level of negligible bribery while score zero represents responses indicating very high levels of bribery)

Rank	Country	Score
1	Sweden	8.3
2	Australia	8.1
	Canada	8.1
4	Austria	7.8
5	Switzerland	7.7
6	Netherlands	7.4
7	United Kingdom	7.2
8	Belgium	6.8
9	Germany	6.2
	United States	6.2
11	Singapore	5.7
12	Spain	5.3
13	France	5.2
14	Japan	5.1
15	Malaysia	3.9
16	Italy	3.7
17	Taiwan	3.5
18	South Korea	3.4
19	China (including Hongkong)	3.1

Appendix II

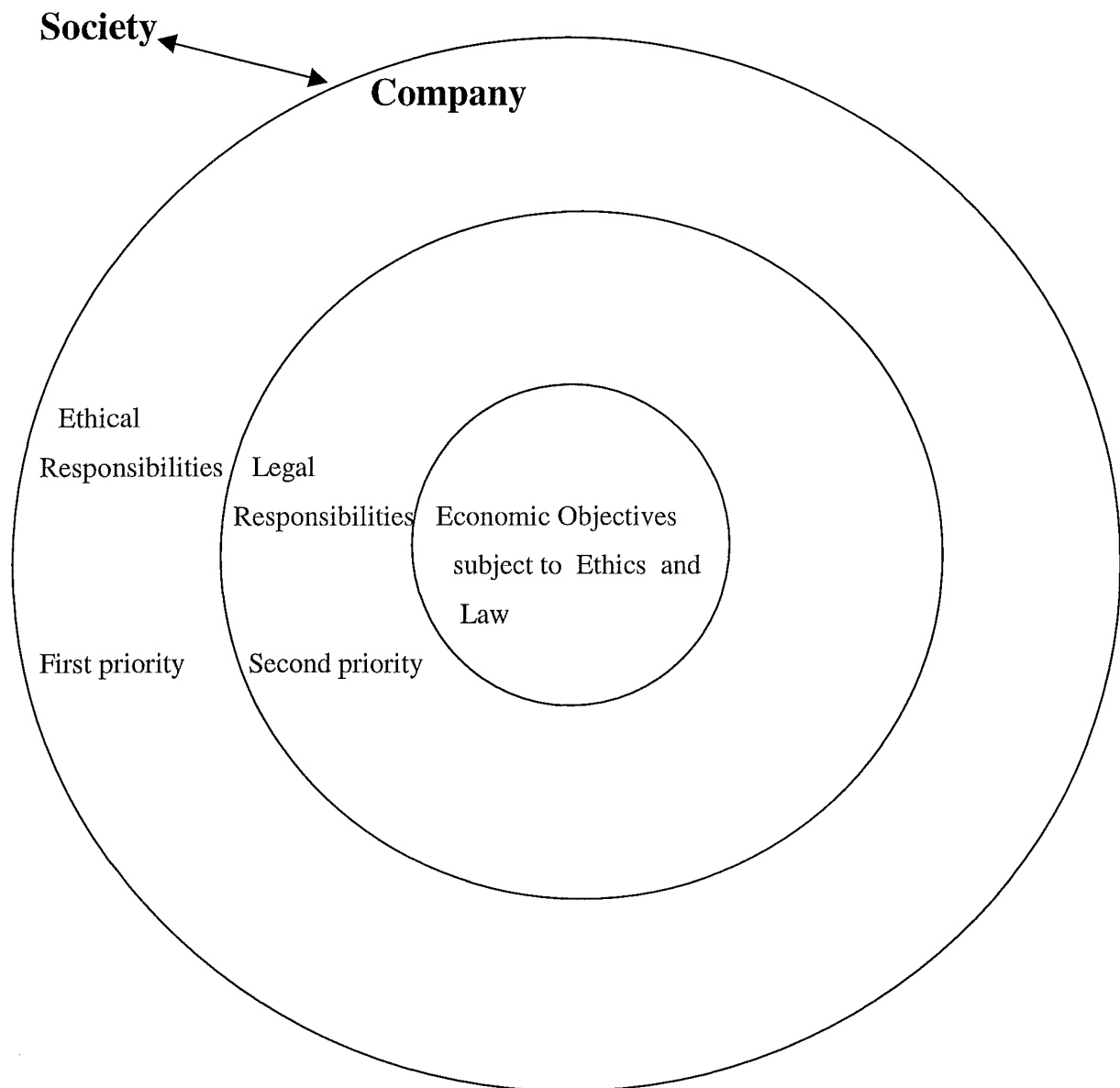
The equivalent for the word Bribe in different countries:

Brazil	<i>jeitinho</i>	Malaysia	<i>makan siap</i>
Egypt	<i>baksheesh</i>	Mexico	<i>mordida</i>
France	<i>pot au vin</i>	Nigeria	<i>dash</i>
Germany	<i>trink gelt</i>	Pakistan	<i>roshvat</i>
Greece	<i>bakssissi</i>	Peru	<i>coima</i>
Honduras	<i>pajada</i>	Phillipines	<i>lagay</i>
Hongkong	<i>hatchien</i>	Soviet Union	<i>vzyatha</i>
Indonesia	<i>wong sogok</i>	Thailand	<i>sin bone</i>
Iran	<i>roshveh</i>	United States	<i>pay off</i>
Italy	<i>bustarella</i>	Zaire	<i>tarif de verre</i>
India	<i>speed money</i>		
Japan	<i>wairo</i>		

(Source: Jacoby, N.H., Nehemkis, P., Eells, R. (1977), page 6, Macmillan Publishing Co. Ltd, N.Y.)

Appendix III**Figure A**

Ethical responsibilities dominate interface between the company and society

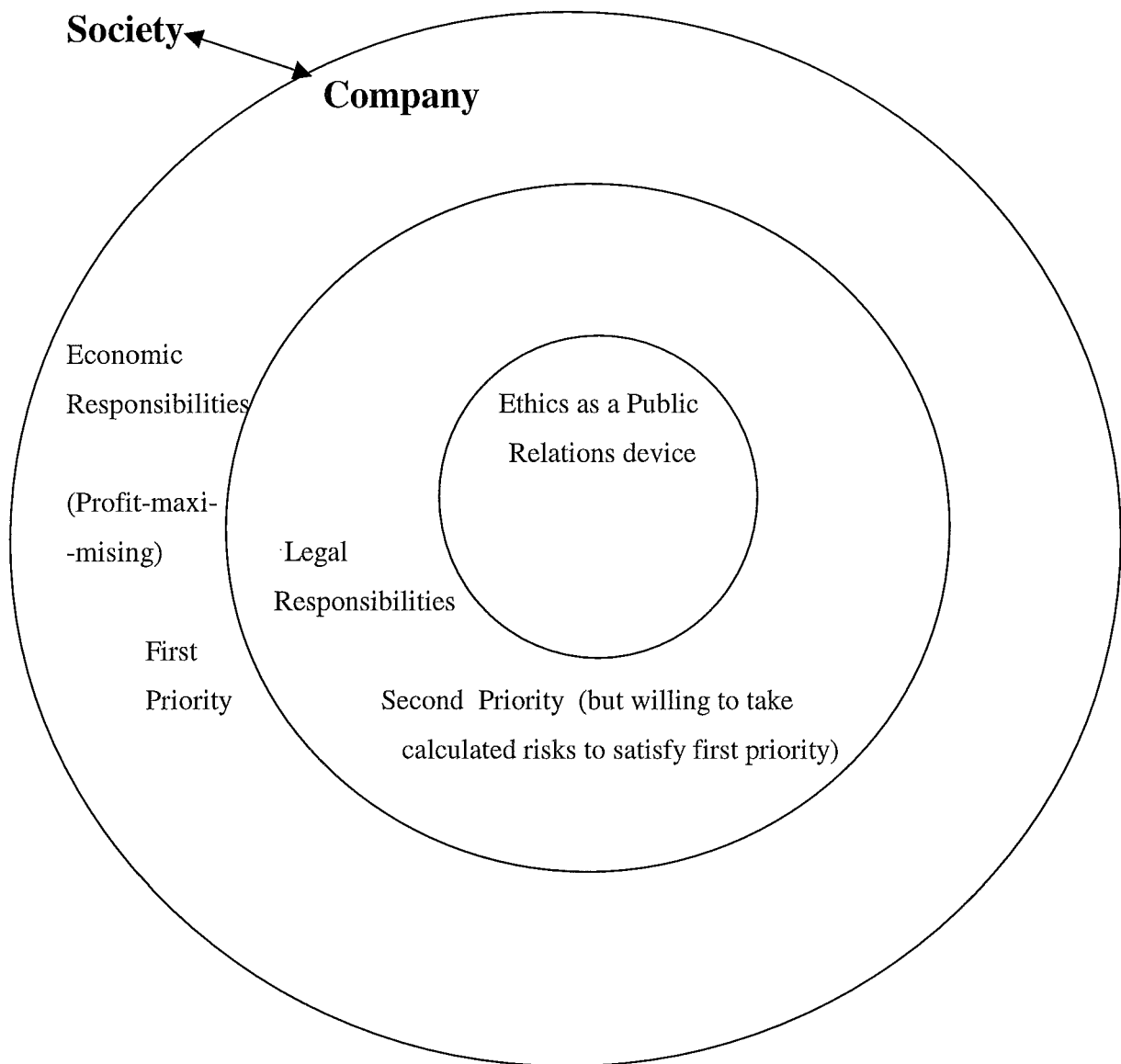


Source: Adapted from Goodpaster, 1984:108

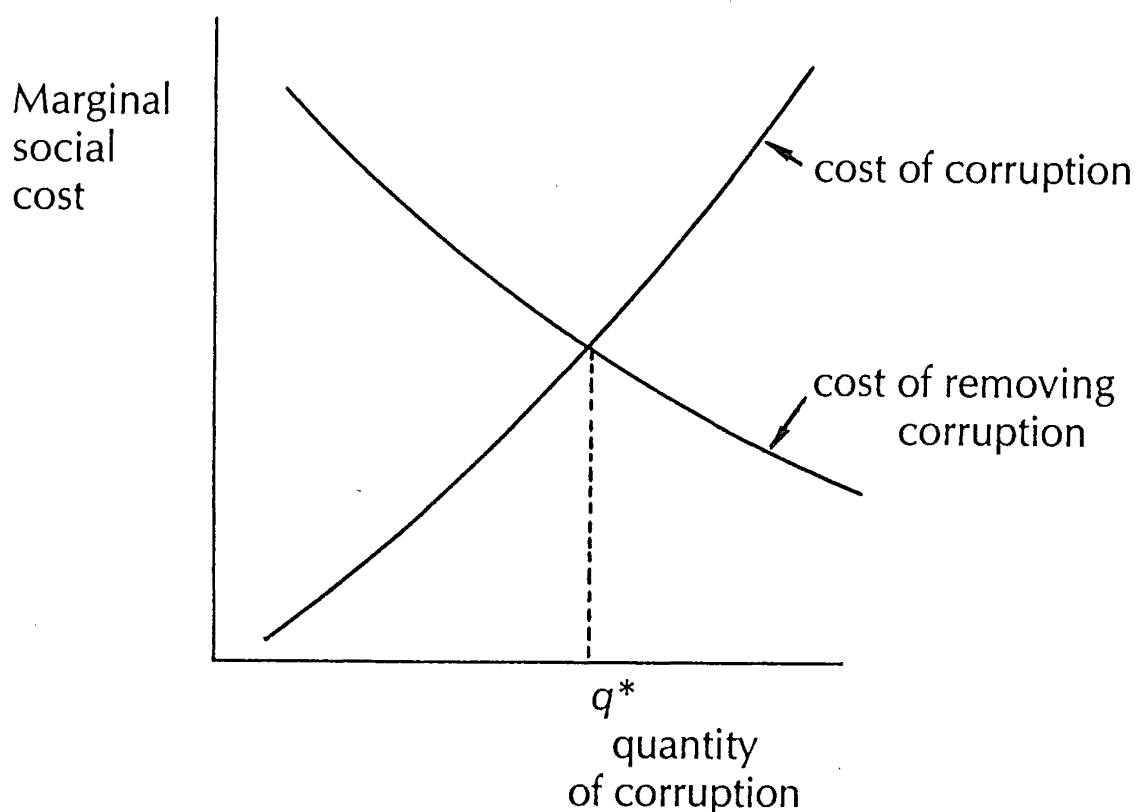
Appendix III (continued)

Figure B

Economic responsibilities dominate interface between company and society



Appendix IV

Klitgaard's Optimal level of corruption

Source: Klitgaard, 1988:26

1. Costs of corruption refers to social costs inflicted by corruption such as breaking down norms of behaviour, creating greater inefficiencies, worsening the distributions of income and power.
2. Costs of removing corruption includes staff costs and other expenditure.
3. 'q' is the intersection of the two costs curves and is the optimal level of corruption indicating the least cost combination of corrupt activities (social costs of corruption) and the efforts to reduce corruption (cost of anti-corruption mechanisms)

Appendix V

Global norms under Integrative Social Contracts Theory

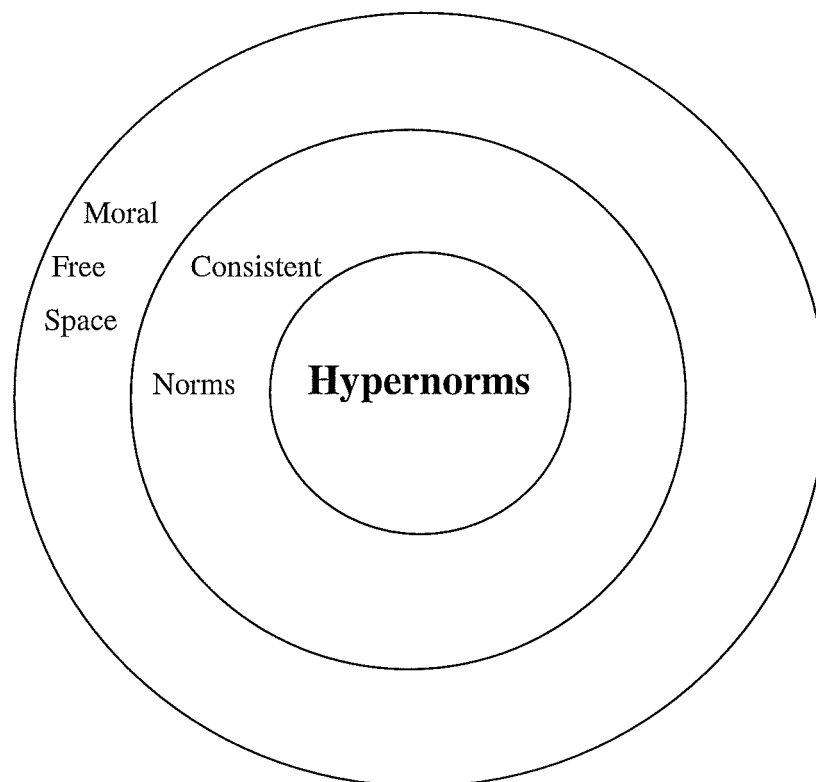
(source: Donaldson & Dunfee, 1999:222)

Illegitimate Norms:

Incompatible with Hypernorms

Illegitimate Norms:

Incompatible with Hypernorms



Illegitimate Norms:

Incompatible with Hypernorms

Illegitimate Norms:

Incompatible with Hypernorms

Examples of:

Hypernorms: Human Rights as per U.N.'s Universal Declaration of Human Rights.

Consistent Norms: Bribery is considered unethical by a vast majority of people.

Moral Free space: Ritualistic gift-giving to monarchy by businesses in some Middle-eastern countries.

Illegitimate Norms: Detention of any individual without a fair judicial process.